



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 6 जून, 2017 / 16 ज्येष्ठ, 1939

हिमाचल प्रदेश सरकार

**LABOUR & EMPLOYMENT DEPARTMENT**

**NOTIFICATION**

*Shimla-171001, the 20<sup>th</sup> December, 2016*

**No.:11-23/84(Lab)ID/2016/Una.**—It appears to the undersigned that an industrial dispute exists between Smt. Seema Rani W/O Shri Balwinder Singh, R/O V.P.O. Ambota, Tehsil Amb,

District Una, H.P. and the Principal, D.A.V. Senior Secondary Public School, Ambota, District Una, H.P. on the issue of alleged termination of his services w.e.f. 01-04-2015.

As per the report under section 12(4) of the Industrial Disputes Act, 1947 submitted by the Conciliation Officer, he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub section-5 of Section-12 of the Act *ibid*, the undersigned has decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section 10 of The Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether termination of services of Smt. Seema Rani W/O Shri Balwinder Singh, R/O V.P.O. Ambota, Tehsil Amb, District Una, H.P., who was employed as Aaya w.e.f. 01-04-2015 by the Principal, D.A.V. Senior Secondary Public School, Ambota, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 31<sup>st</sup> December, 2016*

**No.:11-1/18(Lab)ID/2016/Sunder Nagar.**—Whereas the Labour Inspector-cum-Conciliation Officer, Sunder Nagar, District Mandi has submitted a report as provided under Section-12(4) of the Industrial Disputes Act, 1947 stating that there was an alleged industrial dispute in between Shri Shyam Lal S/O Shri Nikku Ram, R/O Village Bhanthred, P.O. Baroti, Tehsil Sunder Nagar, District Mandi, H.P. and the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. as per demand notice dated 21-07-2015 submitted by the said ex-worker regarding his alleged termination of services.

Whereas, the Labour Inspector-cum-Conciliation Officer, has incorporated in the report that during the course of conciliation proceedings for the purpose of bringing about a legal and amicable settlement, all matters affecting the settlement were investigated and has made all efforts for the purpose of inducing the parties to come to legal, fair and amicable settlement of the said dispute. However, no such settlement could be arrived at in between the parties to the industrial dispute.

Whereas, undersigned while exercising the power vested as provided under sub- section-5 of Section-12 of the Act *ibid* carefully examined the report and come to the conclusion that above

ex-worker had raised the dispute of alleged illegal termination from the services during January, 1998 before the above employer after delay of more than 17 years.

Therefore, in view of the above facts and circumstances, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as provided in Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) and keeping in view the latest judgments of the Hon'ble High Court of Himachal Pradesh, Shimla about the declining the references to the Labour Court for adjudication, formed an opinion to refer this dispute to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, for legal adjudication on following issue/issues:—

“Whether alleged termination of the services of Shri Shyam Lal S/O Shri Nikku Ram, R/O Village Bhanthred, P.O. Baroti, Tehsil Sunder Nagar, District Mandi, H.P. during January, 1998 by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 21-07-2015 after delay of more than 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management? ”

By order,  
Sd/-  
Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 22<sup>nd</sup> December, 2016*

**No.:11-23/84(Lab)ID/2016/Una.**—It appears to the undersigned that an industrial dispute exists between Smt. Sunita Devi W/O Shri Pawan Kumar R/O V.P.O. Nangal Khurd, Tehsil Haroli, District Una, H.P. and the Employer/Managing Director, M/S SURIE(S) Porex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. on the issue of alleged termination of her services w.e.f. 30-09-2015.

As per the report under section 12(4) of the Industrial Disputes Act, 1947 submitted by the Conciliation Officer, he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub section-5 of Section-12 of the Act *ibid*, the undersigned has decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section 10 of The Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether termination of services of Smt. Sunita Devi W/O Shri Pawan Kumar R/O V.P.O. Nangal Khurd, Tehsil Haroli, District Una, H.P. w.e.f. 30-09-2015 by the Employer/Managing Director, M/S SURIE(S) Polex, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

By order,  
Sd/-  
Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 1<sup>st</sup> December, 2016*

**No.:11-5/99(Lab)ID/2016/Chamba.**—It appears to the undersigned that an industrial dispute exists between Shri Ved Bias S/O Shri Rijhu Ram, R/O Village Kali, P.O. Bat, Tehsil Chamba, District Chamba, H.P. and the Principal, Government Post Graduate College Chamba, District Chamba, H.P. on the issue of alleged termination of his services w.e.f. 29-11-2014.

As per the report under section 12(4) of the Industrial Disputes Act, 1947 submitted by the Conciliation Officer, he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub section-5 of Section-12 of the Act *ibid*, the undersigned has decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:-

“Whether termination of services of Shri Ved Bias S/O Shri Rijhu Ram, R/O Village Kali, P.O. Bat, Tehsil Chamba, District Chamba, H.P. w.e.f. 29-11-2014 by the Principal, Government Post Graduate College Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

By order,  
Sd/-  
Deputy Labour Commissioner,  
Himachal Pradesh.

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla-171001, the 21<sup>st</sup> December, 2016*

**No.:11-23/84(Lab)ID/2016/Mandi.**—Whereas the Labour Officer-cum-Conciliation Officer, Mandi has submitted a report as provided under Section-12(4) of the Industrial Disputes Act, 1947 stating that there was an alleged industrial dispute in between Shri Vipin Kumar S/O Shri Jagdish Narayan, R/O Village Kapahi, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. and (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. as per demand notice dated 05-06-2015 submitted by the said ex-worker regarding his alleged termination of services.

Whereas, the Labour Officer-cum-Conciliation Officer, has incorporated in the report that during the course of conciliation proceedings for the purpose of bringing about a legal and amicable settlement, all matters affecting the settlement were investigated and has made all efforts for the purpose of inducing the parties to come to legal, fair and amicable settlement of the said dispute. However, no such settlement could be arrived at in between the parties to the industrial dispute.

Whereas, undersigned while exercising the power vested as provided under sub- section-5 of Section-12 of the Act ibid carefully examined the report and come to the conclusion that above ex-worker had raised the dispute of alleged illegal termination from the services during August, 1999 before the above employer after delay of more than 15 years and has worked only for 94 days during the year 1999.

Therefore, in view of the above facts and circumstances, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as provided in Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) and keeping in view the latest judgments of the Hon'ble High Court of Himachal Pradesh, Shimla about the declining the references to the Labour Court for adjudication, formed an opinion to refer this dispute to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act ibid, for legal adjudication on following issue/issues:—

“Whether alleged termination of the services of Shri Vipin Kumar S/O Shri Jagdish Narayan, R/O Village Kapahi, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. during August, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 05-06-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 for 94 days respectively and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management? ”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla-171001, the 22<sup>nd</sup> December, 2016*

**No.:11-5/93(Lab)ID/2013/Chamba.**—Whereas Ms. Gulabi Devi D/O Shri Veer Chand, R/O V.P.O. Sural Tai, Tehsil Pangi, District Chamba, H.P. had raised a demand notice dated 29-12-2011 regarding her illegal termination from the services by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H., Killar (Pangi), District Chamba, H.P. The Labour Officer-cum-Conciliation Officer Chamba Zone, District Chamba, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he has sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, Himachal Pradesh;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Chamba Zone, Chamba was considered, examined and the Labour Commissioner, Himachal Pradesh as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 11 years and therefore declined the reference of the dispute vide order dated 09-10-2014;

And whereas Ms. Gulabi Devi D/O Shri Veer Chand agitated the above orders of declining of reference of her industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide CWP No. 1222/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the CWP on dated 13-06-2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30th December, 2014, delivered by the Hon'ble High Court in C.W.P. No. 9467 of 2014, titled as Pratap Chand Versus Himachal Pradesh State Electricity Board and others. The operative part of the said judgment is reproduced as follows:—

*“3. In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petitions are disposed of accordingly, alongwith pending applications, if any.”*

Therefore in view of above the undersigned while exercising the powers vested by the Government of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication:—

“Whether the alleged termination of services of Ms. Gulabi Devi D/O Shri Veer Chand, R/O V.P.O. Sural Tai, Tehsil Pangi, District Chamba, H.P. during October, 2000 by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H., Killar (Pangi), District Chamba, H.P. who had worked on daily wages as beldar and has raised her industrial dispute after more than 11 years vide demand notice dated 29-12-2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 11 years in raising the industrial dispute, what amount of back

wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

By order,  
Sd/-  
Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 25<sup>th</sup> November, 2016*

**No.:11-1/85(Lab)ID/2016/Kangra.**—Whereas Shri Amar Singh S/O Shri Diwan Chand, R/O Village Bariara, P.O. Khel, Tehsil Nurpur, District Kangra, H.P. had raised a demand notice dated nil received in Labour Office Kangra at Dharamshala on 13-06-2011 regarding his illegal termination from the services by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P. The Labour Officer-cum-Conciliation Officer Kangra at Dharamshala, District Kangra, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he has sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, Himachal Pradesh;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala was considered, examined and the Labour Commissioner, Himachal Pradesh as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of about 21 years and therefore declined the reference of the dispute vide order dated 22-08-2013;

And whereas Shri Amar Singh S/O Shri Diwan Chand has agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide CWP No. 490/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the CWP on dated 19-03-2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30th December, 2014, delivered by the Hon'ble High Court in C.W.P. No. 9467 of 2014, titled as Pratap Chand Versus Himachal Pradesh State Electricity Board and others. The operative part of the said judgment is reproduced as follows:—

*"3. In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petitions are disposed of accordingly, alongwith pending applications, if any."*

Therefore in view of above the undersigned while exercising the powers vested by the Government of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the

Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act ibid, on the following issue/issues for legal adjudication:—

“Whether the alleged termination of services of Shri Amar Singh S/O Shri Diwan Chand, R/O Village Bariara, P.O. Khel, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 25<sup>th</sup> November, 2016*

**No.:11-1/85(Lab)ID/2016/Kangra.**—Whereas Shri Balwant Singh S/O Shri Tej Ram, R/O V. P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. had raised a demand notice dated nil received in Labour Office Kangra at Dharamshala on 13-06-2012 regarding his illegal termination from the services by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P. The Labour Officer-cum-Conciliation Officer Kangra at Dharamshala, District Kangra, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he has sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, Himachal Pradesh;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala was considered, examined and the Deputy Labour Commissioner, Himachal Pradesh as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of about 22years and therefore declined the reference of the dispute vide order dated 10-04-2015;

And whereas Shri Balwant Singh S/O Shri Tej Ram has agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide CWP No. 748/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the CWP on dated 06-04-2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30th December, 2014, delivered by the Hon'ble High Court in C.W.P. No. 9467 of 2014, titled as Pratap Chand Versus Himachal Pradesh State Electricity Board and others. The operative part of the said judgment is reproduced as follows:—



*“3. In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petitions are disposed of accordingly, alongwith pending applications, if any.”*

Therefore in view of above the undersigned while exercising the powers vested by the Government of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/issues for legal adjudication:—

“Whether the alleged termination of services of Shri Balwant Singh S/O Shri Tej Ram, R/O V. P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 22 years vide demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

By order,  
Sd/-

Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 28<sup>th</sup> November, 2016*

**No.:11-5/99(Lab)ID/2016/Chamba.**—Whereas the Labour Officer-cum-Conciliation Officer, Chamba has submitted a report as provided under Section-12(4) of the Industrial Disputes Act, 1947 stating that there was an alleged industrial dispute in between Shri Subhash Kumar S/O Shri Atti Ram, R/O Village Chow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. through Shri N.L. Kaundal, (Legal Advisor, BMS) H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. and the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. as per demand notice dated 02-07-2015 submitted by the said ex-worker regarding his alleged termination of services.

Whereas, the Labour Officer-cum-Conciliation Officer, has incorporated in the report that during the course of conciliation proceedings for the purpose of bringing about a legal and amicable settlement, all matters affecting the settlement were investigated and has made all efforts for the purpose of inducing the parties to come to legal, fair and amicable settlement of the said dispute. However, no such settlement could be arrived at in between the parties to the industrial dispute.

Whereas, undersigned while exercising the power vested as provided under sub- section-5 of Section-12 of the Act ibid carefully examined the report and come to the conclusion that above ex-worker had raised the dispute of alleged illegal termination from the services during October, 2004 before the above employer after delay of more than 11 years and has worked during October, 2004.

Therefore, in view of the above facts and circumstances, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as provided in Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) and keeping in view the latest judgments of the Hon'ble High Court of Himachal Pradesh, Shimla about the declining the references to the Labour Court for adjudication, formed an opinion to refer this dispute to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act ibid, for legal adjudication on following issue/issues:—

“Whether alleged termination of the services of Shri Subhash Kumar S/O Shri Atti Ram, R/O Village Chow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. through Shri N.L. Kaundal, (Legal Advisor, BMS) H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during October, 2004 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 02-07-2015 after delay of more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of October, 2004 for 31 days and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management? ”

By order,  
Sd/-  
Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 18<sup>th</sup> November, 2016.*

**No.:11-1/86(Lab)ID/2016/Kangra.**—It appears to the undersigned that an industrial dispute exists between Shri Chuhar Singh S/O Shri Jagat Ram, R/O Village Anuhi, P.O. Kotla, Tehsil Jawali, District Kangra, H.P. and the Executive Engineer, I.&P.H., Division Nurpur, District Kangra, H.P. on the issue of alleged time to time termination of his services during June, 1995 to 31-12-2005.

As per the report under section 12(4) of the Industrial Disputes Act, 1947 submitted by the Conciliation Officer, he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub section-5 of Section-12 of the Act ibid, the undersigned has decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers vested by the Government of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section 10 of The Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether time to time termination of the services of Shri Chuhan Singh S/O Shri Jagat Ram, R/O Village Anuhi, P.O. Kotla, Tehsil Jawali, District Kangra, H.P. during June, 1995 to 31-12-2005 by the Executive Engineer, I.&P.H., Division Nurpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits including regularization of services and compensation the above worker is entitled to from the above employer?”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171001, the 7<sup>th</sup> November, 2016*

**No.:11-1/85(Lab)ID/2016/Kangra.**—Whereas Shri Des Raj S/O Shri Mangat Ram, R/O Village Danna, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. had raised a demand notice dated nil received in Labour Office Kangra at Dharamshala on 04-03-2013 regarding his illegal termination from the services by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P. The Labour Officer-cum-Conciliation Officer Dharamshala, District Kangra, H.P. tried to settle the industrial dispute amicably, but the same could not be settled during the course of conciliation proceedings, where after he has sent a report under Section 12(4) of the Industrial Disputes Act, 1947 to the Labour Commissioner, Himachal Pradesh;

And whereas the report sent by the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala was considered, examined and the Deputy Labour Commissioner, Himachal Pradesh as appropriate Government came to the conclusion that above worker had raised the dispute at a belated stage of more than 22 years and therefore declined the reference of the dispute vide order dated 29-05-2015;

And whereas Shri Des Raj S/O Shri Mangat Ram agitated the above orders of declining of reference of his industrial dispute to the Ld. Labour Court before the Hon'ble High Court of Himachal Pradesh vide CWP No. 1227/2016. The Hon'ble High Court of Himachal Pradesh has disposed off the CWP on dated 13-06-2016 and directed the respondents to consider the case of the petitioners, in terms of the judgment dated 30<sup>th</sup> December, 2014, delivered by the Hon'ble High Court in C.W.P. No. 9467 of 2014, titled as Pratap Chand Versus Himachal Pradesh State Electricity Board and others. The operative part of the said judgment is reproduced as follows:—

*“3. In the given circumstances, we deem it proper to direct the respondents to consider the case of the petitioners, in terms of the judgment (supra), and make a decision within eight weeks. The said judgment shall form part of this judgment also.*

*4. The writ petitions are disposed of accordingly, alongwith pending applications, if any.”*

Therefore in view of above the undersigned while exercising the powers vested by the Government of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/issues for legal adjudication:—

“Whether the alleged termination of services of Shri Des Raj S/O Shri Mangat Ram, R/O Village Danna, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years vide demand notice dated nil received in the Labour Office Kangra at Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

By order,  
Sd/-

Deputy Labour Commissioner,  
Himachal Pradesh.

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-171002, the 20<sup>th</sup> May, 2017*

**No. Shram (A)4-4/2017.**—In pursuance of the Notification No. DIT-(e-District)1-2011-83 dated 13-05-2015 issued by the Department of Information Technology, Himachal Pradesh, it is hereby informed that the public services offered by the Department of Labour & Employment, Himachal Pradesh, which are mentioned below will now be delivered to the citizen through online system using the e-District application (<http://edistrict.hp.gov.in/>) Himachal Pradesh state Portal (<http://himachal.nic.in/>) State Service Delivery Gateway (SSDG) (<https://eserviceshp.gov.in/>) LokMitra Kendras(<http://lmk.gov.in/>) Sugam:

The services offered by the Department of Labour & Employment are:

- Registration of Shops and Commercial Establishment.
- Renewal of Shops and Commercial Establishment.

- Registration of Establishment Employing Contract Labour.
- Application for Contract Labour License.
- Renewal of Contract Labour License.
- Inter-State Migrant Workmen Act, 1979:
  - 1- Registration of Establishment of Principal Employer Employing Interstate Migrant Workmen.
  - 2- Licensing of Contractors under the Act.
  - 3- Renewal of License of Contractors under the Act.
- Motor Transport Worker Act, 1961:
  - 1- Registration of Establishment/Motor Transport Undertakings.
  - 2- Renewal of Registration Certificates of establishment/ Motor Transport Undertakings.
- Registration of Establishment under the Building and Other Construction Workers.

Government fee and user charges are as below:

1. Government Fee: As notified by department from time to time.
2. \*LMK User Charges:

Sr. No.	Activity	Proposed user Charges (in Rs.)
1.	Filling up of Application details and uploading citizen request through e-District Portal or LMK Portal	10/-
2.	Scanning & uploading of supporting documents, if any, on the portal/ e-District Portal.	2/- per page
3.	Printing of the final document/ certificate to the citizen after approval of the concerned department (if any)	10/- per page

OR

Sugam User Charges : Rs. 10 per Application

\*Note.—LMK user charges or Sugam user charges would be applicable if the applicant applies at LMK or Sugam centre. The applicant may also apply online directly, wherein only the processing fee along with the government fee will be applicable.

3. In addition to the fees being levied under Sr. No. 1&2, an additional Processing Fee in order to provide Labour & Employment service through e-District application would be charged Rs. 10/- per application. The proceeds of Rs. 10/- would be distributed in the following manner:

Rs. 7/- (70%) i.e. (to Departmental e-governance Society)

Rs. 3/- (30%) i.e. (to e-governance Society of the IT Department).

By order,  
R. D. DHIMAN,  
Principal Secretary (Labour & Employment).

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION**

*Shimla-171001, the 9<sup>th</sup> January, 2017*

**No.:11-5/99(Lab)ID/2016/Chamba.**—Whereas the Labour Officer-cum-Conciliation Officer, Chamba, District Chamba has submitted a report as provided under Section-12(4) of the Industrial Disputes Act, 1947 stating that there was an alleged industrial dispute in between Shri Devi Saran S/O Shri Ram Lal, R/O Village Chask, P.O. Saichu, Tehsil Pangi, District Chamba, H.P. and the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. as per demand notice dated 28-09-2015 submitted by the said ex-worker regarding his alleged termination of services.

Whereas, the Labour Officer-cum-Conciliation Officer, has incorporated in the report that during the course of conciliation proceedings for the purpose of bringing about a legal and amicable settlement, all matters affecting the settlement were investigated and has made all efforts for the purpose of inducing the parties to come to legal, fair and amicable settlement of the said dispute. However, no such settlement could be arrived at in between the parties to the industrial dispute.

Whereas, undersigned while exercising the power vested as provided under sub- section-5 of Section-12 of the Act ibid carefully examined the report and come to the conclusion that above ex-worker had raised the dispute of alleged illegal termination from the services during year, 1996 before the above employer after delay of about 19 years.

Therefore, in view of the above facts and circumstances, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as provided in Sub Section-1 of Section-10 of the Industrial Disputes Act, 1947 (14 of 1947) and keeping in view the latest judgments of the Hon'ble High Court of Himachal Pradesh, Shimla about the declining the references to the Labour Court for adjudication, formed an opinion to refer this dispute to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act ibid, for legal adjudication on following issue/issues:—

“Whether alleged termination of the services of Shri Devi Saran S/O Shri Ram Lal, R/O Village Chask, P.O. Saichu, Tehsil Pangi, District Chamba, H.P. during year, 1996 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 28-09-2015 after delay of about 19 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 19 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management? ”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

**LABOUR & EMPLOYMENT DEPARTMENT****NOTIFICATION**

*Shimla-171001, the 20<sup>th</sup> January, 2017*

**No.:11-23/84(Lab)ID/2016/Una.**—It appears to the undersigned that an industrial dispute exists between the Vice President/Secretary, Himachal Desi Sharab Karamchari Sangh, C/O CLBP, Industrial Area Mehatpur, District Una, H.P. and (i) the Managing Director, Himachal Pradesh General Industries Corporation Limited, Himrus Building, Cart Road, Shimla, H.P., (ii) the General Manager, Himachal Pradesh General Industries Corporation Limited, Country Liquor Bottling Plant, Government of Himachal Pradesh, Industrial Area, Mehatpur, District Una, H.P. and (iii) Ram Singh Kanda & Sons, R/O Ward No. 9, V.P.O. Basdehra, Tehsil & District Una, H.P.(Contractor) on the issue of miscellaneous demands.

As per the report under section 12(4) of the Industrial Disputes Act, 1947 submitted by the Conciliation Officer, he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub section-5 of Section-12 of the Act *ibid*, the undersigned has decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15<sup>th</sup> February, 2014 and as per power vested under Sub Section-1 of Section 10 of The Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal Dharamshala, constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the demands raised by the Vice President/Secretary, Himachal Desi Sharab Karamchari Sangh, C/O CLBP, Industrial Area Mehatpur, District Una, H.P. regarding regularization of 45 contract workers (list enclosed) vide demand notice dated 23-08-2013 (copy enclosed) to be fulfilled by (i) the Managing Director, Himachal Pradesh General Industries Corporation Limited, Himrus Building, Cart Road, Shimla, H.P., (ii) the General Manager, Himachal Pradesh General Industries Corporation Limited, Country Liquor Bottling Plant, Government of Himachal Pradesh, Industrial Area, Mehatpur, District Una, H.P. and (iii) Ram Singh Kanda & Sons, R/O Ward No. 9, V.P.O. Basdehra, Tehsil & District Una, H.P.(Contractor), is legal and justified? If yes, to what relief, service benefits, from which date the above workmen are entitled to from the above employers/ Management?”

By order,  
Sd/-

*Deputy Labour Commissioner,  
Himachal Pradesh.*

**LABOUR AND EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla, the 27<sup>th</sup> May, 2017*

**No: Shram (A) 6-1/2017 (Awards).**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Reference/ Application	Title	Section
1.	Ref.52/2009	Sh. Raj Kumar V/s M/S Rexine Pharmaceuticals (P) Ltd. Village Katha, Baddi District Solan.	10
2.	Ref.46/2014	Sh.Layak Ram V/s The Principal, Green Hills Engineering College, Gandhigram Kumarhatti, District Solan, H.P.	10
3.	Ref.48/2014	Sh. Lokesh Chand Ram V/S -do-	
4.	Ref.81/2015	Sh. Vikram Singh V/s The M.D. HRTC, Shimla & Anr.	10
5.	Ref.94/2016	Sh.Amar Singh V/s The Sr. Executive Engineer, Shimla Electrical Division No.1, HPSEB Ltd. Shimla.	10
6.	Ref.25/17	Sh.Madan Lal V/s M/S Ganga Dari Hydro Power (P) Ltd. Gamba House, Shimla-171009, H.P.	10
7.	Ref.26/2017	Sh. Pawan Kumar V/s -do-	10
8.	Ref.28/2017	Sh. Surjeet Singh V/s -do-	10
9.	Ref.58/2015	Sh. Dinesh Chand V/s Dr. Y.S. Parmar University, Nauni & Anr.	10
10.	Ref.09/2009	Sh. Deep Ram & Ors V/s The M.D. Himfed & Anr.	10
11.	Ref.43/2014	Sh. Reena Devi V/s Manager, (HRD & Admin.) M/S Super Cassettes Industries Ltd. Nalagarh District Solan H.P.	10
12.	Ref.36/2017	The President & General Secretary, Hotal Oberoi Clarks Employees Union V/S The G.M. Clarks Hotal, The Mall, Shimla.	10
13.	Ref.56/2011	The President/General Secretary, Kamla Dial Workers Union V/S Factory Manager, Kamla Dials & Devices Ltd. Parwanoo District Solan, H.P.	10
14.	Ref.129/2016	Sh. Hari Krishan V/s The Executive Engineer, HPPWD, Division Kumarsain District Shimla, H.P.	10



15.	App.10/2015	Sh. Dharmender V/s M/S Mountain Steels (P) Ltd. Buranwala, Baddi District Solan, H.P.	2-A
16.	Ref.130/2016	Sh. Narayan Singh V/s The Divisional Forest Officer, Forest Division, Shimla, H.P.	10
17.	Ref.83/2014	Sh. Hoshiyar Singh V/s M/S Zamil Air conditioners India (P) Ltd. Village Dhadi Kanian, Nalagarh District Solan, H.P.	10
18.	Ref.86/2014	Sh. Kuldeep Singh V/s M/S J.B. Rolling Mills Ltd. Kala Amb. Tehsil Nahan District Sirmour, H.P.	10
19.	Ref.03/2017	Sh. Aman Sood V/s The General Manager, M/S Whirlpool India Ltd. Manimajra, Chandigarh & Ors.	10
20.		Ref.47/2012 Sh. Surender Singh V/s The factory Manager, M/S Base Corporation Ltd. Santosh Complex, Deonghat, Saproon, Solan, H.P.	10
21.	Ref.48/2012	Sh. Ashok Kumar V/s -do-	10
22.	Ref.49/2012	Sh. Mukesh Kumar V/s -do-	10
23.	Ref.50/2012	Sh. Pardeep Kumar V/s -do-	10
24.	Ref.54/2012	Sh. Sunil Kumar V/s -do-	10
25.	Ref.55/2012	Sh. Vijay Singh V/s -do-	10
26.	Ref.56/2012	Sh. Deepak Kaushik V/s -do-	10
27.	Ref.57/2012	Sh. Sita Ram V/s -do-	10
28.	Ref.171/2006	Sh. Jai Lal V/s The Executive Engineer, HPPWD Division Jubbal District Shimla, H.P.	10

By order,  
R.D. DHIMAN, IAS,  
*Pr. Secretary ( Lab. & Emp.).*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Ref. No. : 52 of 2009.**

**Instituted on : 10.8.2009.**

**Decided on : 27.4.2017.**

Raj Kumar Singh S/o Shri Madhu Sudan Singh R/o Village & P.O Muradpur, Tehsil Rosra,  
District Samastipur, Bihar. *...Petitioner.*

VS.

M/s Rexine Pharma, Pvt. Ltd. Baddi, District Solan, HP.

...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri P.S Chandel, Advocate.

For respondent : Ms. Manjula Upadhyay, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**"Whether termination of services of Shri Raj Kumar Singh S/o Shri Madhu Sudan Singh by the M/s Rexine Pharmaceuticals Pvt. Ltd., Khasara no. 105,106, Katha Baddi, District Solan, HP w.e.f. 11.9.2007 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. Briefly, the case of the petitioner is that he was engaged as operator by the respondent company in the year, 2003 at Oskar Plant Dehli on a monthly salary of 2800/-+ over time where he worked till 29.3.2004 and after change in the name of the company from Oscar to Rexine, the petitioner rejoined on 29.3.2004 and later he was transferred to Baddi on 13.7.2004, where he worked till 24.7.2006 on monthly salary of ₹ 4200/- and on 8.1.2007, due to strike, the petitioner went on leave and joined the company on 21.3.2007. It is further stated that on 17.4.2007, during duty hours the petitioner suffered injuries on his hand and got permanent fracture/disability on his left arm and he got his treatment from Sindhant Nursing home where he spent about ₹50,000/- on his treatment and despite fracture, he was compelled to join his duties and as such he joined on 31.8.2007 after the removal of the plaster but he was not allowed to join. It is also stated that before terminating the services of the petitioner neither any notice of termination was given to him nor any enquiry was conducted against him, hence, he is entitled for reinstatement including back-wages. The petitioner is also entitled for ₹ 50,000/- as medical reimbursement, ₹ 50,000/- for mental harassment, ₹5000/- for bus fair to join the hearing before this Court and room rent of ₹72000/-.

3. By filing reply, the respondent contested the claim of the petitioner wherein it has been asserted that there is no relationship of employer and workman between the parties as the petitioner was never employed by the management of respondent company, hence, the question of termination of his services does not arise and that the reference is not based on facts. It is further asserted that the petitioner used to come for casual loading or unloading of material in group with other loaders on casual basis along-with transportation vehicle that does not mean that the petitioner becomes the employee of the respondent. It is denied that the respondent company changed the name to any other company and the petitioner joined the employment of the respondent company. Since, the petitioner was not the employee of respondent company, hence he is not entitled to any relief from the respondent company. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 13.6.2011.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 11.9.2007 is in violation of the provisions of the Industrial Disputes Act, 1947?

...OPP.

2. Whether there is no relationship of employer and workman between the petitioner and respondent? ...*OPR*.
3. Whether there is no statement of claim against the respondent company? ...*OPR*.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Yes.
Issue no.3	Not pressed.
Relief.	Reference answered in favour of the respondent and against the petitioner per operative part of award.

### **Reasons for findings.**

*Issues no.1 &2.*

8. Being interlinked and correlated both these issues are taken up together for discussion and decision.

9. The learned counsel for the petitioner contended that being the workman of the respondent company, the services of the petitioner have been terminated illegally by the respondent without following any provision of the Industrial Disputes act, 1947 (hereinafter referred to as Act) as before terminating his services neither any notice was served upon the petitioner nor he was afforded an opportunity of being heard.

10. On the other hand, learned counsel for the respondent contended that since the petitioner was never engaged by the respondent company, hence, the question of his termination does not arise at all. She further contended that the petitioner never remained in the employment of respondent and as such the claim filed by him against the respondent is illegal.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the documents referred to in affidavit Ex. PA to Ex. PG. In cross-examination, he admitted that he had not placed any document showing that he was appointed by the management and that he was being paid wages for the work done by him under the respondent. He also admitted that he has no record to show that he was getting the benefits of ESI and EPF from the management. He denied that he never worked with the respondent and filed a false petition.

12. On the other hand, the respondent has examined two RWs. RW-1 Shri K.K Dube, has stated that he remained in the employment of respondent company as Manager HR and Administration and no workman having name of Shri Raj Kumar S/o Shri Madhu Sudan Singh was

employed by the company during the period he remained employed with the respondent. He further deposed that no accident had occurred in the company on 17.4.2007, hence, the claim of the petitioner to have suffered injuries in the accident is totally baseless and as per attendance record for the period of May, 2006 to March, 2007 no person in the name of Raj Kumar S/o Shri Madhu Sudan was in the employment of the company and even in the quarterly returns of the contribution under ESI for the period from 1.4.2006 to 30.9.2007, the name of the petitioner does not find mention. He also deposed that since the petitioner was not in the employment of the respondent, there was no question of his being terminated from the service on 11.9.2007 or at any other date in that year. In cross-examination, he admitted that in attendance mark sheets entries are not in his hand. He further admitted that the attendance of the workers has been marked by him. He also admitted that the parentage of the employees had not been mentioned in document mark PY. He denied that deliberately on record the attendance sheets of the petitioner have not been placed.

13. RW-2 Shri S.P Singh appeared into the witness and tendered in evidence his affidavit Ex. RW-2/A wherein he stated that no relationship of employer and workman ever existed between the management and petitioner. He further stated that new factory was established at Baddi where manufacturing was started in the month of June, 2006 which was an independent entity. He also tendered in evidence the documents Ex. RW-2/1 to Ex. RW-2/10. In cross-examination, he admitted that he was working as Senior Executive in Rexine Pharma., Pvt. Ltd. at Delhi in the month of Jan., 2004. He denied that M/s Rexine Pharma., had taken over M/s Oscar Pharma. He admitted that the machines and manpower which were bought by the respondent at Delhi were shifted to Baddi. He further admitted that the attendance of the workers were being marked by the time office. He admitted that the name of Raj Kumar is appearing in annual return of provident fund but he is not the Raj Kumar who is petitioner in this case but he is some other Rajkumar S/o Piyare Singh.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the respondent company M/s Rexine Pharmaceutical Pvt. Ltd. was incorporated in the year, 2004 and it bought the assets relating to manufacturing activities (machines and manpower) of M/s Oscar pharmaceuticals situated at Delhi. In the month of April 2006, the management discontinued its manufacturing activities at Delhi and the Factory License was surrendered to the Inspector of Factories Delhi vide letter dated 12.7.2006 Ex. RW-2/1. A notice Ex. RW-2/2 was issued by the respondent on 5.5.2006 informing the employees to report for duties at Baddi on 18.5.2006 and the new factory was established at Baddi where manufacturing was started in the month of June, 2006. The case of the petitioner is that he was engaged by the respondent company in the year 2003 at Oscar Plant Delhi where he worked till 29.3.2004 and after change in the name of the company from Oscar to Rexine he joined on 29.3.2004 and later he was transferred to Baddi on 13.7.2004. However, no satisfactory evidence has been led by the petitioner in support of his case. In cross-examination, he admitted that he had not placed on record any document/appointment letter issued by the company and he has also not placed on record any document showing that he was being paid wages for the work done by him under the respondent. No record of ESI and EPF has been placed on record by the petitioner in order to prove that he was employed by the respondent. Admittedly, the petitioner was not getting any benefit from ESI and EPF. It was for the petitioner to prove by leading cogent and satisfactory evidence on record that he was engaged and thereafter terminated by the respondent company. However, no such record has been produced by the petitioner. The petitioner has only tendered in evidence the gate pass Ex. PA, complaint dated 11.9.2007 to Labour Inspector Ex. PC and leave application dated 10.5.2007 Ex. PD. However, these documents are the photocopies and the same have not been proved in accordance with law. Moreover, in the gate pass Ex. PA, the name has been mentioned as Rajkumar but father's name has not been mentioned. Therefore, no credence can be attached to Ex. PA because it is the case of the respondent that one person with the same name i.e Rajkumar S/o Piyar Singh was in the employment of the company for some time during relevant period.

However, the name of the father of the petitioner is Madhu Sudan Singh. Therefore, in the absence of original gate pass, it cannot be said that Ex. PA was issued to the petitioner by the respondent company. On the other hand, the respondent has produced the attendance register of its workers and staff for the month of May 2006 to March, 2007 Ex. RW-2/3 and the register of casual workers for the period *w.e.f.* October, 2006 to December, 2006. However, the perusal of the same shows that the name of the petitioner does not find mention in the aforesaid registers. The respondent has also produced the copy of the ESIC return of contribution for the period *w.e.f.* 1.4.2006 to 30.9.2007 and copy of submission of monthly PF contribution from April 2006 to March, 2007 in which the names of the employees of the company have been mentioned but the name of the petitioner does not reflect in the aforesaid documents.

14. Therefore, in view of the entire evidence on record, it cannot be said that the petitioner was ever employed by the respondent and that there existed any relationship of employee and employer between the petitioner and respondent company. Hence, it cannot be said that the termination of the services of the petitioner was in violation of the provisions of the Industrial Disputes Act, 1947 as such both these issues are decided in favour of the respondent and against the petitioner.

***Issue no. 3.***

15. During the course of arguments, this issue was not pressed by the learned counsel for the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 27th Day of April, 2017.

(SUSHIL KUKREJA),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Ref. no. : 46 of 2014.**

**Instituted on : 10.6.2014.**

**Decided on : 26.4.2017.**

Layak Ram S/o Shri Mansa Ram, R/o Village Kyarad, P.O Dhar-ke-ber, Tehsil Kasauli, District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan.

...Petitioner.

VS.

M/s Green Hills Engineering College, Gandhigram Kumarhatti, District Solan, HP through  
its Principal. ...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Vishal Panwar, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**"Whether termination of the services of Shri Layak Ram S/o Shri Mansa Ram, R/o Village Kyarad, P.O Dhar-ke-ber, Tehsil Kasauli, District Solan, HP employed as security guard w.e.f. 20.3.2010 by the management of M/s Principal Green Hills Engineering College, Gandhigram Kumarhatti, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above college/management?"**

2. Facts, in brief are that the petitioner was employed in the respondent college as security guard during the month of September, 2007 and his services were terminated without assigning any reason and without any justification despite the fact that he had completed more than 240 working days preceding his termination and his termination was against the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the respondent had obtained the signatures of the petitioner on blank papers many times under duress in compelling circumstances while exercising colorable employer rights and now it is apprehended that those could be mis-utilized by the respondent to fulfill ulterior motives and even the termination orders of the petitioner are not speaking orders and as such those are null, void and inoperative and he had been punished for extraneous reasons as he was never served with any show cause notice, chargesheet and even no enquiry was ever held against him. It is also stated that the services of junior workmen in the same establishment were retained by the respondent while terminating the services of the petitioner in violation of the provisions of section 25-G and 25-H of the Act. The action of the respondent in terminating the services of the petitioner is deplorable as no opportunity of being heard was afforded to him. Against this backdrop a prayer has been made that the petitioner be reinstated in service with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the reference is neither competent nor maintainable and that vide resignation letter dated 20.3.2010, the petitioner himself resigned from the post of security guard. On merits, it has been asserted that the petitioner had been appointed as a security guard by the respondent in the month of September, 2007 on a salary of ₹ 3900/- per month but his services were never terminated by the respondent who at his own has put up resignation from the post of security guard on 20.3.2010, hence, the provisions of the Act are not attracted in the instant case. Since, the resignation of the petitioner was accepted on 22.3.2010, hence, the requirement of serving show cause notice and chargesheet upon him does not arise. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 9.5.2016.

1. Whether the termination of the services of the petitioner who was employed as security guard *w.e.f.* 20.3.2010 by the respondent without following the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? *...OPP.*
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *...OPP.*
3. Whether the petition is neither competent nor maintainable as alleged? *OPR.*
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.—

Issue no.1      No.

Issue no.2      Becomes redundant.

Issue no.3      No.

Relief.          Reference answered in favour of the respondent and against the petitioner per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. The AR for the petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act as neither any notice was given to the petitioner nor any compensation was paid to him despite the fact that he had completed more than 240 working days in each calendar year. He further contended that after the termination of the petitioner, the respondent retained the persons juniors to him and even engaged fresh hands.

9. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself tendered his resignation on 20.3.2010 which was duly accepted by the respondent on 22.3.2010 as per rules, hence, there is no question of terminating the services of the petitioner.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as security guard on September, 2007 by the respondent and continued as such till 20.3.2010. He had completed more than 240 days in each calendar year and preceding 12 months before his termination. He further deposed that the workers of the respondent had also raised a

demand notice Ex. PW-1/A in December, 2010 on which the Labour-cum-Conciliation Officer, Solan had directed the Labour Inspector to take appropriate action. He also deposed that neither any notice/chargesheet was issued nor any enquiry was conducted before terminating his services and no compensation was paid to him and even the salary for the period from 1st March, to 20th March, 2010 had also not been paid to him. His juniors namely Vinod Kumar and Parmanand etc., have been retained. In cross-examination, he admitted that he was getting ₹ 3900/- per month as wages. He denied that he had left the job at his own and that on 20.3.2010, he had written a resignation letter which was accepted by the respondent on 22.3.2010. He also denied that his services were never terminated.

11. The respondent has examined one Shri Jeet Singh as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B and copy of resignation letter dated 20.3.2010 Ex. RW-1/C. In cross-examination, he denied that the petitioner had never given any resignation letter and the letter Ex. RW-1/C is forged. He further denied that letter Ex. RW-1/C does not bear the signatures of the petitioner. He admitted that no letter has been issued to the petitioner regarding acceptance of his resignation. He admitted that after 20.3.2010, the respondent had engaged another security guard. He further admitted that no compensation was paid to the petitioner.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was employed with the respondent college as security guard in the month of September, 2007 on a monthly salary of ₹ 3900/- and he tendered his resignation from the post of security guard on 20.3.2010 vide resignation letter Ex. RW-1/C. The perusal of resignation letter Ex. RW-1/C shows that the same has been signed by the petitioner on 20.3.2010 and it was duly accepted by the respondent on 22.3.2010. Though, in cross-examination, a suggestion has been put to RW-1 that the letter Ex. RW-1/C does not bear the signatures of the petitioner. However, neither in the claim petition nor in the rejoinder it has been pleaded by the petitioner that the resignation letter does not bear his signatures. Rather, in the claim petition, the petitioner has taken a specific plea that the respondent had obtained his signatures on various blank papers many times under duress in compelling circumstances meaning thereby that the petitioner is admitting his signatures on the letter Ex. RW-1/C. However, no evidence has been led by the petitioner to this effect that his signatures have been obtained by the respondent on various blank papers many times under duress in compelling circumstances.

13. The AR for the petitioner next contended that since the acceptance of the resignation was not communicated to the petitioner, therefore, the resignation has become inoperative. He also placed reliance upon the cross-examination of RW-1 wherein he admitted that no letter has been issued to the petitioner regarding acceptance of his resignation. However, this contention of the AR for the petitioner is devoid of any force because non-communication of the acceptance does not make the resignation in-operative. **In AIR 2007 SC 2719, North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar**, the Hon'ble Supreme Court has held that "non-communication of the acceptance does not make the resignation in-operative provided there is in fact an acceptance before the withdrawal." Meaning there by that the resignation can be withdrawn before its acceptance and the same cannot be withdrawn by an employee after it has been accepted even though not communicated to the employee. In the present case, the perusal of the resignation letter Ex. RW-1/C shows that it has been duly accepted by the respondent on 22.3.2010. It is not the case of the petitioner that the resignation was withdrawn by him at any point of time before its acceptance. Therefore, in view of the law laid down (supra), the non-communication of the acceptance does not make the resignation in-operative as contended by the AR for the petitioner. Moreover, no evidence has been led by the petitioner that he had completed 240 days in each calendar year as admitted by him in cross-examination. He admitted that he had not annexed any



record about the completion of 240 days in each calendar year. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** , the Hon'ble Supreme Court has held as under:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

***“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The AR for the petitioner lastly contended that the termination of the services of the petitioner is in violation of the provisions of section 25-G and 25-H of the Act. However, since it has been proved on record that the petitioner has himself tendered his resignation from the post of security guard, hence, the case of the petitioner does not come in the ambit of provisions of sections 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 20.3.2010 by the respondent is not illegal and unjustified, who himself had tendered his resignation which was duly accepted by the respondent company. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

### ***Issue no. 2.***

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

### ***Issue No. 3.***

17. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

**Relief.**

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 26th day of April, 2017.

(SUSHIL KUKREJA),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

**Ref. no. : 48 of 2014.**

**Instituted on : 10.6.2014.**

**Decided on : 26.4.2017.**

Lokesh Chand S/o Shri Padam Singh R/o Village Tarol, P.O Gahighat, Tehsil Kasauli, District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan.

...Petitioner.

VS.

M/s Green Hills Engineering College, Gandhigram Kumarhatti, District Solan, HP through its Principal.

...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Vishal Panwar, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**"Whether termination of the services of Shri Lokesh Chand S/o Shri Padam Singh, R/o Village Tarol, P.O Gahighat, Tehsil Kasauli, District Solan, HP employed as security guard w.e.f. 20.3.2010 by the management of M/s Principal Green Hills Engineering College, Gandhigram Kumarhatti, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above college/management?"**

2. Facts, in brief are that the petitioner was employed in the respondent college as security guard during the month of September, 2007 and his services were terminated without assigning any reason and without any justification despite the fact that he had completed more than 240 working days preceding his termination and his termination was against the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the respondent had obtained the signatures of the petitioner on blank papers many times under duress in compelling circumstances while exercising colorable employer rights and now it is apprehended that those could be mis-utilized by the respondent to fulfill ulterior motives and even the termination orders of the petitioner are not speaking orders and as such those are null, void and inoperative and he had been punished for extraneous reasons as he was never served with any show cause notice, chargesheet and even no enquiry was ever held against him. It is also stated that the services of junior workmen in the same establishment were retained by the respondent while terminating the services of the petitioner in violation of the provisions of section 25-G and 25-H of the Act. The action of the respondent in terminating the services of the petitioner is deplorable as no opportunity of being heard was afforded to him. Against this backdrop a prayer has been made that the petitioner be reinstated in service with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the reference is neither competent nor maintainable and that vide resignation letter dated 20.3.2010, the petitioner himself resigned from the post of security guard. On merits, it has been asserted that the petitioner had been appointed as a security guard by the respondent in the month of September, 2007 on a salary of ₹3900/- per month but his services were never terminated by the respondent who at his own has put up resignation from the post of security guard on 20.3.2010, hence, the provisions of the Act are not attracted in the instant case. Since, the resignation of the petitioner was accepted on 22.3.2010, hence, the requirement of serving show cause notice and chargesheet upon him does not arise. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 9.5.2016.

1. Whether the termination of the services of the petitioner who was employed as security guard *w.e.f.* 20.3.2010 by the respondent without following the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP.*
3. Whether the petition is neither competent nor maintainable as alleged? ...*OPR.*
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

17. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. The AR for the petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act as neither any notice was given to the petitioner nor any compensation was paid to him despite the fact that he had completed more than 240 working days in each calendar year. He further contended that after the termination of the petitioner, the respondent retained the persons juniors to him and even engaged fresh hands.

9. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself tendered his resignation on 20.3.2010 which was duly accepted by the respondent on 22.3.2010 as per rules, hence, there is no question of terminating the services of the petitioner.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as security guard on September, 2007 by the respondent and continued as such till 20.3.2010. He had completed more than 240 days in each calendar year and preceding 12 months before his termination. He further deposed that the workers of the respondent had also raised a demand notice Ex. PW-1/B in December, 2010 on which the Labour-cum-Conciliation Officer, Solan had directed the Labour Inspector to take appropriate action. He also deposed that neither any notice/chargesheet was issued nor any enquiry was conducted before terminating his services and no compensation was paid to him and even the salary for the period from 1st March, to 20th March, 2010 had also not been paid to him. His juniors namely Vinod Kumar and Parmanand etc., have been retained. In cross-examination, he admitted that he was getting ₹ 3900/- per month as wages. He denied that he had left the job at his own and that on 20.3.2010, he had written a resignation letter which was accepted by the respondent on 22.3.2010. He also denied that his services were never terminated.

11. The respondent has examined one Shri Jeet Singh as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B and copy of resignation letter dated 20.3.2010 Ex. RW-1/C. In cross-examination, he denied that the petitioner had never given any resignation letter and the letter Ex. RW-1/C is forged. He further denied that letter Ex. RW-1/C does not bear the signatures of the petitioner. He admitted that no letter has been issued to the petitioner regarding acceptance of his resignation. He admitted that after 20.3.2010, the respondent had engaged another security guard. He further admitted that no compensation was paid to the petitioner.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was employed with the respondent college as security guard in the month of September, 2007 on a monthly salary of ₹3900/- and he tendered his resignation from the post of security guard on 20.3.2010 vide resignation letter Ex. RW-1/C. The perusal of resignation letter Ex. RW-1/C shows that the same has been signed by the petitioner on

20.3.2010 and it was duly accepted by the respondent on 22.3.2010. Though, in cross-examination, a suggestion has been put to RW-1 that the letter Ex. RW-1/C does not bear the signatures of the petitioner. However, neither in the claim petition nor in the rejoinder it has been pleaded by the petitioner that the resignation letter does not bear his signatures. Rather, in the claim petition, the petitioner has taken a specific plea that the respondent had obtained his signatures on various blank papers many times under duress in compelling circumstances meaning thereby that the petitioner is admitting his signatures on the letter Ex. RW-1/C. However, no evidence has been led by the petitioner to this effect that his signatures have been obtained by the respondent on various blank papers many times under duress in compelling circumstances.

13. The AR for the petitioner next contended that since the acceptance of the resignation was not communicated to the petitioner, therefore, the resignation has become inoperative. He also placed reliance upon the cross-examination of RW-1 wherein he admitted that no letter has been issued to the petitioner regarding acceptance of his resignation. However, this contention of the AR for the petitioner is devoid of any force because non-communication of the acceptance does not make the resignation in-operative. **In AIR 2007 SC 2719, North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar**, the Hon'ble Supreme Court has held that "non-communication of the acceptance does not make the resignation in-operative provided there is in fact an acceptance before the withdrawal." Meaning there by that the resignation can be withdrawn before its acceptance and the same cannot be withdrawn by an employee after it has been accepted even though not communicated to the employee. In the present case, the perusal of the resignation letter Ex. RW-1/C shows that it has been duly accepted by the respondent on 22.3.2010. It is not the case of the petitioner that the resignation was withdrawn by him at any point of time before its acceptance. Therefore, in view of the law laid down (supra), the non-communication of the acceptance does not make the resignation in-operative as contended by the AR for the petitioner. Moreover, no evidence has been led by the petitioner that he had completed 240 days in each calendar year as admitted by him in cross-examination. He admitted that he had not annexed any record about the completion of 240 days in each calendar year. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

**“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”**

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

**“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant

case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The AR for the petitioner lastly contended that the termination of the services of the petitioner is in violation of the provisions of section 25-G and 25-H of the Act. However, since it has been proved on record that the petitioner has himself tendered his resignation from the post of security guard, hence, the case of the petitioner does not come in the ambit of provisions of sections 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 20.3.2010 by the respondent is not illegal and unjustified, who himself had tendered his resignation which was duly accepted by the respondent company. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

***Issue no. 2.***

16. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

***Issue No. 3.***

17. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

***Relief.***

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 26th day of April, 2017.

(SUSHIL KUKREJA),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Ref. no. : 81 of 2015.**

**Instituted on : 1.12.2015.**

**Decided on : 28.4.2017.**

Vikram Singh S/o Shri Roshan Lal R/o Village & P.O Thana Tehsil Chirgaon, District Shimla, HP. ...Petitioner.

VS.

1. The Managing Director, HPTDC Ltd., Ritiz Annexe, The Ridge, Shimla-1.
2. The Manager, HPTDC Ltd., Hotel Kinnur kailash Kalpa (Kinnaur), District Kinnaur, HP. ...Respondents.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri R.K Khidta, Advocate.

For respondents : Shri Virender Sharma, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**"Whether termination of the services of Shri Vikram Singh S/o Shri Roshan Lal R/o Village & P.O Thana Tehsil Chirgaon, District Shimla, HP by (i) The Managing Director, HPTDC Ltd., Ritiz Annexe, The Ridge, Shimla-1 (ii) The Manager, HPTDC Ltd., Hotel Kinnur kailash Kalpa (Kinnaur), District Kinnaur, HP w.e.f. 16.7.2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of reinstatement, back-wages, compensation, seniority and other service benefits the above aggrieved workman is entitled to from the above employer?"**

2. In nutshell the case of the petitioner is that initially he was engaged on contract basis as utility worker on compassionate ground by the respondents w.e.f. 4.5.2012 and worked as such till 31.7.2012 and thereafter his services were illegally terminated by the respondents without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner was re-engaged w.e.f. 10.9.2012 and worked as such till 31.12.2012 and thereafter his services were again terminated by the respondents without following the provisions of the Act. Then, the petitioner was again re-engaged w.e.f. 20.4.2013 and worked as such till 15.7.2013 and thereafter his services were again terminated. It is also stated that the father of the petitioner was working as regular employee with the respondents at Dharamshala who died during service period on 9.3.1999 and as per the Policy, the petitioner applied for the job on compassionate ground and as such, the respondent offered the job of utility worker to the petitioner and he joined the same on 4.5.2012. Since, neither retrenchment notice nor compensation has been paid to the petitioner before terminating his service, hence, his termination is in violation of the provisions of section 25-F of the Act. The work and conduct of the petitioner was always appreciated by the officials and nothing contrary was ever conveyed to him and even no chargesheet was served to him during his employment. That the petitioner had completed 240 days in each calendar year, hence, his termination is totally illegal and even the respondents have engaged other persons on compassionate ground who are still working with the corporation whereas the services of the petitioner have been illegally terminated. That after the termination of the services of the petitioner, he visited the office of the respondents number of times but of no avail and even the work which the petitioner was performing is still available with the respondents. That the petitioner was entitled to regular job on compassionate ground as his father was serving with the respondents for the last 18 years on regular basis and died during his duty period and the

breaks given by the respondents to the petitioner are totally illegal and even the petitioner is unemployed *w.e.f.* 16.7.2013 and is nowhere gainfully employed. Against this back-drop a prayer has been made that the respondents be directed to reinstate the petitioner in service along-with all consequential benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, cause of action, estoppel and that the petition is bad for mis-joinder of parties. On merits, it has been asserted that the petitioner was engaged against the specific seasonal requirement from 4.5.2012 to 31.7.2012 for a specific period of 89 days and on the completion of 89 days, he was disengaged. It is denied that the petitioner was engaged on contract basis as utility worker on compassionate grounds. It is further denied that the petitioner was illegally terminated by the respondents without following the mandatory provisions of the Act. It is asserted that there was neither any question of satisfactory work of the petitioner nor any departmental enquiry could be initiated against him as he was not a permanent employee of the respondent and the nature of duties of the petitioner was seasonal and not on daily basis which comes to an end automatically on the completion of the work. It is denied that the petitioner had completed 240 days in a calendar year and that he visited the office of the respondents for his reengagement. It is asserted that the petitioner has no right to continue up to his superannuation in the seasonal job and even the petitioner does not fall within the definition of employee as provided under the Act as his engagement was purely for specific seasonal work for specific period of 89 days. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 1.10.2015.

5. Whether the termination of the services of the petitioner *w.e.f.* 16.7.2013 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? ...*OPP.*
6. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP.*
7. Whether the petition is not maintainable as alleged? ...*OPR.*
8. Whether the petitioner is estopped to file the present petition due to his own acts, deeds and conduct? ...*OPR.*
9. Whether the petition is bad for mis-joinder of parties as alleged? ...*OPR.*
10. Relief.

6. Before, I proceed further, it is important to mention here that earlier the petitioner had filed the petition under section 2-A of the Act as the Labour Commissioner has not referred the dispute to this Court for adjudication even after the expiry of 45 days which was registered as Application no. 88 of 2014 and this Court proceed to record the proceedings in application no. 88/2014 but since the dispute in question was referred by the Government under reference, hence, vide order dated 30.12.2015 passed in application no. 88 of 2014, the petition along-with documents was ordered to be clubbed with the present reference.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.



8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1	No.
Issue no. 2	Becomes redundant.
Issue no. 3	No.
Issue no. 4.	No.
Issue no. 5.	No.
Relief.	Reference answered in favour of the respondent and against the petitioner per operative part of award.

### ***Reasons for findings.***

#### ***Issues no.1.***

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that many junior persons have been retained and fresh hands have been engaged after the termination of the petitioner in violation of the provisions of sections 25-G and 25-H of the Act.

10. On the other hand, Ld. counsel for the respondents contended that the services of the petitioner had been engaged only for a specific period for specific and seasonal work at first instance and thereafter the same was extended from time to time as per the requirement but the petitioner never worked beyond 89 days at one stretch and the services of the petitioner were never terminated illegally by the respondents.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-1/B and copy of reply to demand notice Ex. PW-1/C. In cross-examination, he admitted that he was engaged as utility worker on contract for seasonal work *w.e.f.* 4.5.2012 to 31.7.2012 for 89 days but clarified that he was not engaged for seasonal work. He denied that his services were again engaged as a utility worker on contract basis for seasonal work t he had not filed any record pertaining to completion of 240 days in a year. He also denied that no fresh persons were engaged after his termination on 15.7.2013. He admitted that the persons namely Pradeep Kumar, Tara Chand and Ravi Shankar were engaged prior to him. He further admitted that the agreements Ex. RX-1 Ex. RX-3 were signed by him but denied that he had signed the aforesaid agreements after reading its contents.

12. PW-2, clerk from the office of HPTDC Rampur has produced the list of appointments given/pending on the basis of compassionate grounds *w.e.f.* 2002 till 5.8.2015 Ex. PW-2/A and the records showing the appointments/engagements given to Pradeep Kumar, Ravi Shankar and Tara Chand are Ex. PW-2/B to Ex. PW-2/D. In cross-examination, he stated that the petitioner was appointed as utility worker on seasonal basis on executing the affidavits for a period of 89 days and he was called upon to work *w.e.f.* 15.9.2012 to 15.11.2012 but he did not report for work.

13. The respondents examined one Shri Kahna Singh, Clerk as RW-1 who stated the petitioner was engaged as utility worker on seasonal basis at HPTDC Kinnar Kailash Kalpa on 4.5.2012 and total working days of the petitioner in the year 2012 are 201 and in the year, 2013, the working days of the petitioner are 85 as per the certificate Ex. RW-1/B. He further deposed that in September, 2013, the petitioner was again called telephonically for doing seasonal work but he did not come to join the duties. In cross-examination, he denied that record Ex. RW-1/B has not been prepared by him. He denied that the petitioner was engaged on contract basis in the month of May, 2012. He admitted that the petitioner had worked continuously from 4.5.2012 to 31.7.2012 and thereafter his services were terminated without any notice and any compensation. He further admitted that the petitioner was reengaged on 10.9.2012 and he worked continuously upto 30.12.2012 and thereafter again his services were terminated without any notice and compensation. He also admitted that the petitioner was also engaged in the month of April, 2013 and he worked continuously upto 14.7.2013 and again his services were terminated without notice and compensation. He admitted that the petitioner had submitted all the documents complete in all respects at HPTDC office at Shimla in the year, 2006 for compassionate appointment. He denied that the petitioner was engaged on contract basis on 4.5.2012. He admitted that many persons were engaged after the engagement of the petitioner and many junior persons to the petitioner are still in service. He further admitted that no notice in writing was issued to the petitioner to join the duties and that no enquiry was held against the petitioner. He also admitted that the work which the petitioner was doing is still available and that Ex. PW-2/A is true and correct as per the record. He admitted that Tara Chand was engaged after the petitioner and he is still in service and that some other persons were also engaged on seasonal basis on compassionate ground after the death of the father of the petitioner in the year, 1999.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged as utility worker on seasonal basis by the respondents on 4.5.2012 as per agreement Ex. RX-1. Thereafter, again his services were engaged *w.e.f.* 10.9.2012 to 31.12.2012 vide agreement Ex. RX-2 and *w.e.f.* 20.4.2013 to 15.7.2013 vide agreement Ex. RX-3. The perusal of agreements Ex. RX-1 to Ex. RX-3 go to show that his services were engaged purely on contractual basis and were to stand automatically terminated on the completion of the contract period i.e. after the completion of 89 days and that no separate order/notice in this respect was required to be issued. It has also been admitted by petitioner in his cross-examination that he was engaged as utility worker on contract basis for seasonal work *w.e.f.* 4.5.2012 to 31.7.2012 for 89 days. He further admitted that the agreements Ex. RX-1 to Ex. RX-3 were signed by him. The perusal of mandays chart Ex. RW-2/B shows that the petitioner had worked only for 201 days in the year, 2012 and 85 days in the year, 2013

15. Hence, from the perusal of agreements Ex. RX-1 to Ex. RX-3, coupled with the admission of petitioner, it stands duly proved on record that the petitioner had been engaged by the respondents purely on contractual basis for a specific period on seasonal basis. The contract further provides that the services of the petitioner would stand automatically terminated on the completion of the period of the contract *i.e.* after the completion of 89 days and no separate notice was required to be issued in this respect. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors, it has been held** that:—

**“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.**

*It was also held in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post. In 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. the Hon'ble Supreme Court has held as under:*

**“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.**

**12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”**

16. In the instant case, admittedly, the petitioner was engaged purely on contractual basis for a specific period to do the seasonal work and on the expiry of period of contract, his services stood automatically came to an end. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged purely on contractual basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter V-A of the Act would not apply. Consequently, the petitioner has failed to prove that his services were terminated by the respondents in violation of the provisions of the Act and the issue is decided in favour of the respondents and against the petitioner.

#### ***Issue no.2.***

18. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

#### ***Issue no.3.***

19. At the time of arguments, the Ld. Counsel for the respondent could not show as to why this petition, in the present form is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in negative.

#### ***Issue no.4&5.***

20. The onus to prove these issues was on the respondents, however, no evidence has been led by the respondents to prove these issues. Therefore, both these issues are decided in favour of the petitioner and against the respondents.

#### ***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 28th Day of April, 2017.

(SUSHIL KUKREJA),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

27.4.2017.

Present : None for the petitioner.

Shri Sudhir Negi, Advocate vice csl. for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 15.11.2016 on which date petitioner appeared in person and ShriSudhirNegi, Advocate appeared for respondent and the case was adjourned for filing of claim on 27.12.2016 on which date at the request of petitioner the case was further adjourned for filing of claim on 21.2.2017 but thereafter from 21.2.2017, the petitioner failed to appear before this Court and then again the notice had been issued for the service of the petitioner but despite that, notice has not been received back either served or un-served. Moreover, earlier the petitioner has appeared before this Court twice but thereafter failed to appear before this Court and to file statement of claim which means that he is having the knowledge about the pendency of the reference before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Amar Singh S/o late Shri Chet Ram R/o Village Deothi, P.O Mashobra, Tehsil & District Shimla during December, 1994 by the Senior Executive Engineer, Shimla Electrical Division no.1 HPSEB Ltd. Shimla 171009 who had worked as beldar on daily wages only for 61 days during 1993 and 91 days during 1994 and has raised his industrial dispute after about 20 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 61 and 91 days during the years, 1993 and 1994 respectively and delay of about 20 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has alleged his termination during December, 1994 to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had worked only for 61 and 91 days during the years, 1993 and 1994 respectively and raised the present dispute after about 20 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the

absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during December, 1994. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
27.4.2017.

(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

25.4.2017.

Present : None.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim on behalf of the petitioner but neither the petitioner nor his Advocate has put in appearance before this Court in order to file the statement of claim despite the fact that on the previous date of hearing Shri Manohar Lal Sharma, Advocate appeared on behalf of the petitioner. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether demand of ShriMadanLal S/o late ShriGopal Singh Village Bahali, P.O Munish Bahali, Tehsil Rampur, District Shimla regarding his re-engagement in service before the management of M/s Ganga Dhari Hydro Power Pvt. Ltd., Gamba House South End, Lane-IV, Phase-1 New Shimla 171009 (Site office M/s Ganga Dhari Hydro Power Pvt. Ltd., Village Jongi, P.O MunishBahali, Tehsil Rampur, District Shimla) after getting his full & final dues is legal and justified? If yes, what relief the above workman is entitled to from the above management?”**

From the aforesaid reference it is clear that the petitioner has raised the demand regarding his re-engagement after taking full and final dues from the respondent. The petitioner has failed to appear before this Court and to file statement of claim which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
25.4.2017.

(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

25.4.2017.

Present : None.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim on behalf of the petitioner but neither the petitioner nor his Advocate has put in appearance before this Court in order to file the statement of claim despite the fact that on the previous date of hearing Shri Manohar Lal Sharma, Advocate appeared on behalf of the petitioner. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether demand of Shri Pawan Kumar S/o late Shri Ganga Ram Village Jongi, P.O Munish Bahali, Tehsil Rampur, District Shimla regarding his re-engagement in service before the management of M/s Ganga Dhari Hydro Power Pvt. Ltd., Gamba House South End, Lane-IV, Phase-1 New Shimla 171009 (Site office M/s Ganga Dhari Hydro Power Pvt. Ltd., Village Jongi, P.O Munish Bahali, Tehsil Rampur, District Shimla) after getting his full & final dues is legal and justified? If yes, what relief the above workman is entitled to from the above management?”**

From the aforesaid reference it is clear that the petitioner has raised the demand regarding his re-engagement after taking full and final dues from the respondent. The petitioner has failed to appear before this Court and to file statement of claim which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
25.4.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

25.4.2017.

Present : None.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim on behalf of the petitioner but neither the petitioner nor his Advocate has put in appearance before this Court in order to file the statement of claim despite the fact that on the previous date of hearing Shri Manohar Lal Sharma, Advocate appeared on behalf of the petitioner. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether demand of ShriSurjeet Singh S/o ShriGian Singh R/o Village & P.O MunishBahali, Tehsil Rampur, District Shimla regarding his re-engagement in service before the management of M/s Ganga Dhari Hydro Power Pvt. Ltd., Gamba House South End, Lane-IV, Phase-1 New Shimla 171009 (Site office M/s Ganga Dhari Hydro Power Pvt. Ltd., Village Jongi, P.O MunishBahali, Tehsil Rampur, District Shimla) after getting his full & final dues is legal and justified? If yes, what relief the above workman is entitled to from the above management?”**

From the aforesaid reference it is clear that the petitioner has raised the demand regarding his re-engagement after taking full and final dues from the respondent. The petitioner has failed to appear before this Court and to file statement of claim which shows that he is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
25.4.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

**Ref. No. : 58 of 2015.**

**Instituted on. : 7.9.2015.**

**Decided on : 19.4.2017.**

Dinesh Chand S/o Shri Chonkia Ram R/o VPO Daro-Devria, Tehsil Pachhad, District  
Sirmour, HP. *...Petitioner.*

*Vs.*

1. The Registrar, Dr. Y.S Parmar University of Horticulture & Forestry, Nauni, District  
Solan, HP.

2. The Associate Director (Seed Technology) Dr. Y.S Parmar University of Horticulture  
& Forestry, Nauni, District Solan, HP. *...Respondents.*

**Reference under Section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri J.C Bhardwaj, AR.

For respondents : Shri Balwant Thakur, Advocate.

**AWARD**

The following reference has been sent by the appropriate government for adjudication:

**“Whether termination of the services of Shri Dinesh Chand S/o Shri Chonkia Ram R/o VPO Daro-Devria, Tehsil Pachhad, District sirmour, HP *w.e.f.* 24.8.2011 by (1) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nauni 173230 District Solan, HP (2) The Associate Director (Seed Technology) Dr. Y.S Parmar University of Horticulture and Forestry Nauni 173230 District Solan, HP without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of reinstatement, back-wages, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?”**

2. Briefly, the case of the petitioner is that at first instance during the month of Jan., 2002 he was engaged as beldar by the respondents on contract basis and worked in the department of Seed Technology and he remained as such till 24.8.2011 when his services were orally terminated by the respondents without any justification and cogent reasons. The services of the petitioner are continuous for the purpose of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as he remained in the employment for more than 10 years and had worked for more than 240 days in twelve calendar months preceding his termination. The respondent did not comply with the statutory and mandatory provisions of section 25-N/ 25-F of the Act as neither any notice was served to the petitioner nor he was paid compensation in lieu of notice, hence, the termination of the services of the petitioner is retrenchment under section 2(oo) of the Act. The termination of the services of the petitioner based on surmises and conjectures as unfair labour practice being violative of section 25-G and 25-H of the Act as after his termination, juniors were retained and new hands were recruited and deployed in his place. Against this back-drop a prayer has been made that he be reinstated in service with full back-wages, seniority and other consequential service benefits.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections had been taken that the claim is not sustainable and that being the educational institute, the respondent university does not fall under the jurisdiction of the Act. On merits, it has been asserted that as per standing instructions regarding engagement of labour on contractual basis in respondents university, a labour was engaged on contractual basis to do manual work on seasonal basis by needy departments of the University and the labour had been engaged under adhoc projects funded by the outside agencies if there were excessive work due to increase in the seasonal and existing category Employees are unable to cope with it within the required period and all engagements of labourers were made at a fixed salary on contractual basis for a period of 89 days in one spell and two spells in whole year after a break of at least 15 days in each spell for essential seasonal jobs subject to availability of funds and as such the petitioner was engaged by respondent no.2 vide copies of engagement letters dated 3.2.2011, 26.5.2011 and 27.5.2011 to 23.8.2011 as a labourer on contractual basis on certain terms and conditions under adhoc project HMM-42-31. The petitioner also executed an agreement on judicial stamp paper that he should not claim any right for regular of temporary adjustment in the University against any corresponding post. It is further asserted that the petitioner was also engaged by the Professor and head Department of Silviculture and Agro-Forestry as a labourer vide letters dated 19.3.2005, 16.8.2005 and 12.1.2006 and he was also engaged by the Professor and Head Department of Floriculture and Landscaping under adhoc project *w.e.f.* 1.8.2002 to 30.9.2002, 5.8.2003 to 5.9.2003, 4.2.2004 to 30.4.2004, 17.5.2004 to 13.8.2004 as a labourer and thereafter he was engaged by the Professor and head, Department of Soil Science and Water Management under adhoc project *w.e.f.* 11.8.2007 to 16.4.2007, 7.5.2007 to 31.7.2007, 1.2.2008 to 29.3.2008, 16.4.2008 to 13.4.2007, 5.1.2009 to



2.4.2009 and 4.5.2009 to 31.7.2009 as a labourer. It is denied that the petitioner was engaged as beldar on contract basis during the month of Jan., 2002 in the department of Seed Technology and remained continued till his termination of services on 24.8.2011. The petitioner was engaged under different adhoc projects by the different departments as per the availability of funds and seasonal needs in the farms of the department of Seed Technology and other departments and as such the provisions of section 25-N/25-F does not apply in the instant case. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 4.1.2016.

1. Whether the termination of the services of the petitioner *w.e.f.* 24.8.2011 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the petition is not maintainable as alleged? ...*OPR.*
4. Whether the petition is barred by limitation as alleged? ...*OPR.*

Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in favour of the respondents and against the petitioner per operative part of award.

### ***Reasons for findings.***

#### ***Issue no.1.***

8. The AR for the petitioner contended that the services of the petitioner had been terminated in violation of the provisions of the Act as before terminating his services, neither any notice was issued nor any compensation was given to him despite the fact that he had completed 240 working days in each calendar year and the persons junior to him have been retained and even fresh hands have been engaged in violation of the provisions of sections 25-G and 25-H of the Act.

9. On the other hand, Ld. Counsel for the respondents contended that as per standing instructions regarding engagement of labour on contractual basis in respondents university, the petitioner was engaged on contractual basis to do manual work on seasonal basis by needy departments of the University and the petitioner had been engaged under adhoc projects funded by the outside agencies. He further contended that since the engagement of the petitioner was purely on contractual basis with the need of work and availability of funds, there was no question to comply with the provisions of the Act.

10. The petitioner while appearing into the witness box as PW-1 has stated that initially he was engaged as beldar by the respondents during the month of Jan., 2002 on contract basis and as such he worked in the department of Seed technology till 24.8.2011. His services had been terminated without issuing any notice and paying any compensation. He was given fictional breaks during his service tenure and he had worked for 240 days in the preceding twelve calendar months. He further stated that his juniors are still working and fresh hands have been appointed after his termination and he is unemployed. In cross-examination, he denied that his services were engaged for a project but admitted that he was engaged for a period of 89 days. He admitted that during his tenure, he worked at different places in the university. He denied that he had worked under different projects. He further denied that he had left the job at his own and that he was being paid salary by the projects.

11. On the other hand, the respondents examined four RWs. RW-1 Shri Chaman Lal, Technical Assistant Grade-1 Department of Floriculture and landscape Architecture of respondents has stated that the petitioner had worked in Department of Floriculture and Landscape Architecture of respondents in various spells as contractual labour under project NATP *w.e.f.* 1.8.2002 to 30.9.2002, 31.8.2003 to 5.9.2003, 29.2.2004 to 30.4.2004 and 31.5.2004 to 13.8.2004 as per mandays chart Ex.RW- 1/A. He further stated that the respondent university is not engaging any contractual labour since the year, 2013 and is outsourcing the work. In cross-examination, he denied that the petitioner was appointed on daily wages in the year, 2002. He further denied that no letter was issued to the petitioner that he was engaged for a specific work on contractual basis. He also denied that the petitioner had worked continuously from August, 2002 to August, 2003 and that many fresh hands were engaged after the termination of the services of the petitioner. He admitted that the petitioner was working under the supervision of the University. He denied that the mandays chart Ex. RW-1/A is wrongly prepared.

12. Shri Tilak Raj, Forest Ranger, Silviculture and Agro Forestry appeared into the witness box as RW-2 to depose that the petitioner was engaged as contractual labour on 21.3.2005 under FGI-053-20 Project vide letter Ex. RW-2/A. The petitioner had worked under project FCR-034-20 from 17.8.2005 to 14.1.2005 vide letter Ex. RW-2/B and thereafter the petitioner was engaged on contractual basis under FGI-047-20 project from 12.1.2006 to 31.3.2006 vide letter Ex. RW-2/E and vide Ex. RW-2/F he had also given an undertaking that he would not claim any seniority. In cross-examination, he denied that letters Ex. RW-2/A, Ex. RW-2/B and Ex. RW-2/D were never served on the petitioner. He admitted that no signatures of the petitioner have been obtained on the aforesaid letters. He denied that the undertaking Ex. RW-2/C and Ex. RW-2/F do not bear the signatures of the petitioner. He denied that the petitioner was engaged on daily wages. He admitted that all the departments and projects are of the university.

13. Shri Kaka Ram, Field Assistant, G-1 stepped into the witness box as RW-3 to depose that as per mandays chart Ex. RW-3/A, the petitioner was engaged in the department of Soil Science on contractual basis under project from 1.1.2007 to 16.4.2007, 7.5.2007 to 31.7.2007, from 16.4.2008 to 13.7.2008, from 5.1.2009 to 2.4.2009 and from 4.5.2009 to 31.7.2009. The petitioner was appointed on contractual basis under various projects for 89 days only and presently the work in different projects is given on outsource basis. In cross-examination, he admitted that all the

projects and departments are under the university and no retrenchment compensation was paid to the petitioner. He denied that mandays chart Ex. RW-3/A has been wrongly prepared.

14. RW-4 Shri Khem Chand Sharma Senior Assistant has stated that the petitioner was a contractual labour in some project and he had worked in their department *w.e.f.* 4.2.2011 till 3.5.2011 and from 23.5.2011 till 23.8.2011 as per mandays chart Ex. RW-4/A and the copy of appointment letter issued to the petitioner is Ex. RW-4/B. The petitioner had given affidavits Ex. RW-4/C and Ex. RW-4/D, dated 21.2.2011 and 1.6.2011. In cross-examination, he admitted that the department of Seeds Science Technology is not closed and is having the same regular staff as it was having earlier. He denied that the mandays chart Ex. RW-4/A is fabricated and that affidavits Ex. RW-4/C and Ex. RW-4/D have been obtained by force. He admitted that after the year, 2011 various projects have been started in the university which are still going on.

15. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that petitioner had worked in the different departments of the University under different projects as contractual labourer in different spells. The perusal of the record goes to show that initially the petitioner was engaged under project NATP *w.e.f.* 1.8.2002 to 30.9.2002, 31.8.2003 to 5.9.2003, 29.2.2004 to 30.4.2004 and 31.5.2004 to 13.8.2004 as per mandays chart Ex. RW-1/A. Thereafter the petitioner was engaged as contractual labour on 21.3.2005 under FGI-053-20 Project vide letter Ex. RW-2/A and then he had worked under FCR-034-20 Project from 17.8.2005 to 14.1.2005 vide letter Ex. RW-2/D. The petitioner was also engaged on contractual basis under FGI-047-20 Project from 12.1.2006 to 31.3.2006 vide letter Ex. RW-2/E. Thereafter, the petitioner was engaged in the department of Soil Science on contractual basis under project FMS-046-17 from 1.1.2007 to 16.4.2007, from 7.5.2007 to 31.7.2007, from 15.1.2008 to 29.2.2008, from 16.4.2008 to 13.7.2008, 5.1.2009 to 2.4.2009 and from 4.5.2009 to 31.7.2009 as per mandays chart Ex. RW-3/A. The petitioner was further engaged from 4.2.2011 to 3.5.2011 and from 23.5.2011 till 23.8.2011 as per manday chart Ex. RW-4/A. Therefore, from the aforesaid material on record, it is clear that the petitioner had worked with the respondents in different departments as a casual worker on contract basis. The petitioner has also given undertaking Ex. RW-2/C and Ex. RW-2/F wherein he specifically stated that he was employed on contractual basis. He also given affidavits Ex. RW-4/C and Ex. RW-4/D wherein he specifically stated that he may be retrenched at any time without any notice and he shall not claim any right for regular or temporary adjustment against any corresponding post. Hence, from the perusal of the record, it stands duly proved that the services of the petitioner had been engaged by the respondents on contract basis under different departments of the University in the different spells. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors, it has been held** that:-

***“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.***

*It was also held in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.* that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post. In **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. the Hon’ble Supreme Court** has held as under:

**“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the**

purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

**12. Central Bank of India Vs. S. Stayam** whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

16. In the instant case, admittedly, the petitioner was engaged on contractual basis with the different departments of the university under the different projects in the different spells. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged on contract basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that his case falls within the exception as prescribed under section 2(oo)(bb) of the Act. Consequently, the petitioner fails to prove this issue, to which my answer is in the negative.

#### **Issue no.2.**

17. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

#### **Issue no.3.**

18. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

#### **Issue no.4.**

19. In support of this issue no specific evidence has been led by the respondent which could go to show that as to how the present petition is barred by limitation. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. that:—*

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"*

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the **Hon'ble Supreme Court in 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways Hissar** has held that Limitation Act has no application to

reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

**"16. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka it was held by this Court as follows:**

**"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis supplied).**

**17. In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer".**

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

### ***Relief.***

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed. The reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 19th Day of April, 2017.

**(SUSHIL KUKREJA)**

*Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

**Ref. No. : 9 of 2009.**

**Instituted on. : 17.2.2009.**

**Decided on : 18.4.2017.**

1. Deep Ram S/o Shri Daulat Ram.
2. Jivand Lal S/o Shri Tushu Ram.
3. O.P Thakur.
4. Shiv Kumar S/o Shri Damodar Dass.
5. Sarswati Devi W/o Shri Damodar Dass.
6. Sunita W/o Shri Prabhu Ram.
7. Meera Sharma.
8. Resu Chandle.
9. Pushpa.
10. Lekh Ram S/o Shri Badru Ram.
11. Balvinder Singh S/o Shri Gian Singh.
12. Manohar Lal.
13. Ram Kali.
14. Heiu Dassi

(All are presently working with Himfed i.e respondent no.2).

...Petitioners.

Vs.

1. The Managing Director, Himfed Shimla-3, HP.

2. The Liquidator, Super Bazar Shimla.

...Respondents.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

**For petitioner : Shri R.L Sharma, Advocate.**

**For respondent no. 1 : Shri Hitender Thakur, Vice Shri P.P Chauhan, Advocate.**

**For respondent no. 2. : Already ex-parte.**

**AWARD**

The following reference has been received from appropriate government for adjudication:

***“Whether action of i) The Managing Director Himfed Shimla-3 ii) The Liquidator Super Bazar Shimla 171001 not to pay the bonus to Shri Deep Ram S/o Shri Daulat Ram and 15 other workers (list enclosed) for the period w.e.f. 1.4.2001 to 31.3.2004 is proper and justified? If not, what amount of bonus the aggrieved workmen are entitled to from their employers?”***

2. Briefly, the case of the petitioners is that vide agreement dated 18.6.1994, they were deployed with the respondent no.1 by the respondent no.2 with certain conditions and thereafter the entire PDS work/business was also transferred to respondent no.1 and the petitioners are still continuing with same work under the control of respondent no.1. It is further stated that the bonus

to the petitioners had not been paid *w.e.f.* 1.4.2001 to 31.3.2004 and upto 31.3.2009 despite personal visits and representation. A legal notice dated 23.11.2004 had also been served upon the respondents but no action had been taken. Since, the petitioners had not received the bonus *w.e.f.* 1.4.2001 to 31.3.2009, hence they are entitled to following amount:

Name of the workman	Amount of bonus per year	Total amount <i>w.e.f.</i> 1.4.2001 to 31.3.2009
Deep Ram	2600	23400
Jivand Lal	2400	21600
Shiv Kumar	2400	21600
Sarswati Devi	2900	26100
Sunita	3000	27000
O.P Thakur	3000	27000
Meera Sharma	2800	25000
Resu Chandle	2600	23400
Pushpa	2200	19800
Lekh Ram	2100	18900
Balvinder Singh	2100	18900
Manohar Lal	2000	18000
Ram Kali	2000	18000
Heiu Dassi	2000	18000
<b>Total amount ...</b>		<b>3,24,900/-</b>

Hence, the petitioners prayed for the release of bonus amounting to Rs. 3,24,900/- along-with interest & 18 % per annum *w.e.f.* 1.4.2001 till date.

3. The respondent no.1 contested the claim by filing a reply wherein preliminary objections qua locus standi, time barred and maintainability had been raised. On merits, it has been asserted that on the request of respondent no.2, respondent no.1 agreed to run fair price shops on management basis and as per clause 4 of the agreement it was agreed that the workers employed in the running of twelve shops would remain on the roll of respondent no.2 and the respondent no.1 would make payments of their salaries through respondent no.2 at the present pay scale being drawn by each worker. It is further asserted that the petitioners are not entitled to any bonus in view of the fact that there is no relationship of employee and employer between petitioners and respondent no.1. The respondent no.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent no.2 also contested the claim of the petitioners wherein it has been asserted that at present there are fourteen employees deployed with the respondent no.1 by respondent no. 2 and the bonus bills for the year 2008-09 and 2009-10 had been submitted to respondent no.1 but the respondent no.1 had not paid the bonus to the petitioners till date.

5. No rejoinder was filed. On the pleadings of the parties, the following issues were struck on 17.7.2010.

1. Whether the action of the respondents in not paying the bonus to the petitioners for the period *w.e.f.* 1.4.2001 to 31.3.2004 is justified as alleged? ...*OPP.*
2. Whether this petition is not maintainable? ...*OPR.*
3. Relief.

6. Thereafter the case was listed for the evidence of the petitioner. It is pertinent to mention here that vide order dated 13.1.2011, the respondent no.2 was proceeded against ex-parte.

7. I have heard the learned counsel for the petitioner and learned Dy. DA for respondent and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 No.

Relief. Reference answered in favour of the petitioners and against the respondents per operative part of award.

### ***Reasons for findings***

#### ***Issues no.1.***

9. The petitioners as well as respondent no.1 have led their evidence in support of the aforesaid issues.

10. Shri Deep Ram, petitioner no.1 has appeared into the witness box as PW-1 and tendered his affidavit in examination-in-chief wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence documents Ex. PW-1/A to Ex. PW-1/M. In crossexamination, denied that the bonus is not to be paid by the respondent. He also denied that the bonus is to be paid by the liquidator only.

11. On the other hand, the respondent no.1 has examined one Shri K. D Sharma, General Manager as RW-1, who tendered his affidavit Ex. RW-1/A in examination-in-chief. In crossexamination, he denied that the petitioners had not been paid the bonus *w.e.f.* 1994 to 2001. He admitted that in his affidavit he had written that bonus *w.e.f.* 1994 to 2001 had been paid to the petitioners and thereafter no bonus had been paid to them. He admitted that the salary was being paid to the petitioner by respondent no.1 through liquidator. He also admitted that the petitioners had written various letters for the release of bonus to department but no bonus had been given to them.

12. Learned counsel for the petitioner contended that the petitioners were deputed with respondent no.1 by the respondent no.2 vide letter dated 18.6.1994 on certain conditions stipulated therein and the business was also transferred to respondent no.1, hence, the respondents are bound to pay the bonus *w.e.f.* 1.4.2001 to 31.3.2009. The non-payment of bonus to the petitioners for the aforesaid period is against the statutory provisions of the Payment of Bonus Act, 1965.

13. On the other hand the learned counsel for the respondent no.1 contended that there is no relationship of employee and employer between the petitioners and respondent no.1, hence, the petitioners are not entitled to any bonus from respondent no.1.



14. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

15. After the closure scrutiny of the record of the case, it has become clear that prior to June, 1994 the petitioners were serving with the Central Co-operative Consumer Store Shimla registered under the Cooperative Societies Act. It is also an admitted fact that vide letter dated 18.6.1994 Ex. PW-1/A, the respondent no.1 agreed to utilize twelve shops for management purpose along-with eighteen workers (ten salesmen and eight helpers). It is also not disputed that respondent no.1 continued to pay bonus to the petitioners w.e.f. the year 1994 till 2000 but the payment of bonus to the petitioners was stopped w.e.f. the year, 2001.

16. The first contention of the learned counsel for the petitioners is that they have not been paid the bonus w.e.f. 1.4.2001 to 31.3.2009, as per calculation made in the claim petition. However, the point of dispute referred for adjudication is that whether the action of respondents not to pay the bonus to petitioner's w.e.f. 1.4.2001 to 31.3.2004 is proper and justified. But, this Court cannot go beyond the terms of reference because it is a settled law that the jurisdiction of the Industrial Court to decide the industrial disputes is determined by the terms of reference. Where in an order referring an industrial dispute to a Tribunal under section 10 (1) of the Act, the appropriate government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points only. In other words, the Tribunal is not free to enlarge the scope of dispute referred to it but must confine its adjudication to the points specifically mentioned. The jurisdiction of the Tribunal is circumscribed by the terms of reference and not by the pleadings of the parties. In **(2004) 10 SCC 460, Mukand Ltd Vs. Mukand Staff and Officers Association**, the Hon'ble Supreme Court has held that the Labour Court is the creature of the reference and cannot travel beyond the terms of reference. The relevant portion of the aforesaid judgment is reproduced as under:

"36. We, therefore, hold that the reference is limited to the dispute between the Company and the Workmen employed by them and that the Tribunal, being the creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference.

In the present case also as observed earlier, as per the terms of reference the point of dispute between the parties is as to whether the action of respondents not to pay the bonus to petitioner's w.e.f. 1.4.2001 to 31.3.2004 is proper and justified. Therefore, in view of the law laid down by the Hon'ble Supreme Court, this Court has no jurisdiction to go beyond the terms of reference and inquire into the question as to whether the petitioners are entitled to bonus w.e.f. 1.4.2004 till 31.3.2009 from the respondents.

17. Now, coming to the point of dispute referred for adjudication *i.e* as to whether the action of the respondents in not paying the bonus to the petitioners for the period w.e.f. 1.4.2001 to 31.3.2004 is justified or not. Section 8 of the Act provides for eligibility for bonus whereas Section 10 of reproduce both the aforesaid sections as under:

**"8. Eligibility for bonus.**—Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

**"10. Payment of minimum bonus.**—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the

employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words —one hundred rupees”, the words —sixty rupees ”were substituted.”

18. Thus, from the careful perusal of both the aforesaid sections, it has become clear that every employee is entitled to be paid by his employer in an accounting year, bonus in accordance with the provisions of the Act provided he has worked in the establishment for not less than thirty working days in that year and from the perusal of section 10 of the Act it has become clear that a minimum bonus @ 8.33% has to be paid by the employer to every employee irrespective of the fact that whether the employer has any allocable surplus or not in the accounting year. Since, it is not disputed that the bonus was being paid to the petitioners’ by respondent no.1 *w.e.f.* the year, 1994 till the year, 2000, in my opinion, the payment of bonus could not have been stopped *w.e.f.* the financial year, 2001. No plausible and satisfactory explanation has been given by respondent no.1 regarding non-payment of bonus to the petitioners. It is also not in dispute that all the petitioners are eligible for bonus as per section 8 of the Act. Therefore, in such a situation, it is the statutory obligation of the respondents to pay to the petitioners’ minimum bonus @ 8.33% of the salary/wages as earned by petitioners during the accounting year as per section 10 of the Act irrespective of the fact that whether the employer has any allocable surplus or not in the accounting year.

19. Therefore, in view of the aforesaid observations, I have no hesitation in coming to the conclusion that the action of the respondents in not paying bonus to the petitioners *w.e.f.* 1.4.2001 to 31.3.2004 is improper and unjustified. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

### **Issue no. 3.**

20. In support of this issue, no evidence has been led by the respondents which could go to show as to why the petition is not maintainable. Moreover, the petitioner has filed the present claim pursuant to the reference sent by the appropriate government to this Court for adjudication. Accordingly, by holding it to be maintainable, this issue is decided in favour of the petitioners and against the respondents.

### **Relief.**

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioners succeeds and is hereby allowed with the result the respondents are directed to pay the minimum bonus @ 8.33 % *w.e.f.* 1.4.2001 to 31.3.2004 to the petitioners within a period of three months from today failing which, the petitioners shall be entitled to interest @ 9% per annum from the date of award till its realization. The reference is ordered to be answered in favour of the petitioners and against the respondents. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of April, 2017.

**(SUSHIL KUKREJA)**

*Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.*

**26.4.2017.****Present :** Petitioner with ShriChetan Sharma, Advocate.

Shri Rahul Mahajan, Advocate for respondent.

At this stage it has been stated by the petitioner that she is ready and willing to settle the dispute with the respondent as the company has agreed to pay a sum of ₹ 50,000/- (₹ Fifty Thousand only) on or before 15th May, 2017 towards her full and final settlement of claim arising out of reference no. 43 of 2014. She further stated that the aforesaid amount of ₹ 50,000/- (₹ Fifty Thousand only) be remitted to her by the company through on her residential address and she will have no claim thereafter against the company in any manner with respect to her service with the respondent. To this effect her statement recorded separately. Vide separate statement Shri Rahul Mahajan, Advocate for the respondent company has stated that the company is ready and willing to pay a sum of ₹ 50,000/- (₹ Fifty Thousand only) on or before 15th May, 2017 towards her full & final claim arising out of the reference no. 43 of 2014 and the aforesaid amount shall be remitted through on the residential address of the petitioner. Therefore, in view of the aforesaid statements, since the dispute has been settled between the parties, the present reference is answered in terms of aforesaid statements which shall form a part of the award. It is made clear that the aforesaid amount shall be remitted to the petitioner on or before 15th May, 2017 failing which the same shall carry interest @ 9% per annum. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File after completion, be consigned to records.

Announced:  
26.4.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge*  
*Labour Court, Shimla.*

**25.4.2017****Present :** SH. Dhani Ram, General Secretary for petitioner.

Shri Rahul Mahajan, Advocate for respondent.

Today, a joint application has been filed on behalf of the petitioner union and the respondent management for placing on record settlement dated 30.12.2016 with a prayer to dispose of the reference by passing appropriate order/award in terms of settlement dated 30.12.2016. The application is supported with the affidavits of ShriDhani Ram, General Secretary of the petitioner union as well as Shri Amar Deep Singh General Manager of the respondent.

At this stage it has been stated by Shri Dhani Ram, General Secretary of petitioner union that the demands raised by the union vide demand notice dated 5.3.2015 stands settled in terms of settlement dated 30.12.2016 Ex. C-1, hence, the reference be decided in terms of settlement Ex. C-1. To this effect his statement recorded separately. Therefore, in view of the aforesaid joint applicant and also in view of the statement of Shri Dhani Ram, I am satisfied that a lawful compromise as per settlement Ex. C-1 has been entered between the parties. Hence, the reference is disposed of in view of the statement of Shri Dhani Ram, General Secretary and settlement Ex. C-1, which shall form a part of this award/order. Let a copy of this award/order be sent to appropriate government for publication in the official gazette.

File, after completion, be consigned to records.

Announced:  
25.4.2017

(SUSHIL KUKREJA),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. no. : 56 of 2011.

Instituted on : 22.11.2011.

Decided on : 6.4.2017.

Kamla Dial Workers Union (Regd. No. 322) Parwanoo, District Solan, HP through its  
President/general Secretary. ...*Petitioner.*

VS.

M/s Kamla Dials & Devices Ltd., Plot no. 3, Sector-III, Parwanoo, District Solan, HP  
through its Factory Manager. ...*Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri R.K Khidtta, Advocate.

For respondent : Shri Rahul Mahajan, Advcoate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

***"Whether miscellaneous demands raised by the Kamla Dial Workers Union (Regd. No. 322) Parwanoo, District solan, HP before the management of M/s Kamla Dial & Devices Ltd., Sector-III, Parwanoo, District solan, HP vide demand notice dated 4.12.2010 (copy enclosed) are proper and justified? If yes, what relief the aggrieved workmen are entitled to? If not, what its effect?"***

2. Briefly, the case of the petitioner union is that being a registered union under Trade Union Act, the petitioner union had elected its body and Shri Vijay Kumar had been elected as President and Shri Vijay Anand as Secretary and they have been duly authorized to file the present case. It has further been stated that the petitioner and respondent used to settle their respective claim including increase in the bonus of the workers by way of rising demand and the company used to pay the bonus as per the demand and as per the profit and keeping in other relevant factors to the workers. That the workers through its union approached the respondent for the payment of

bonus @ 20% to the workers for the year, 2009-2010 as the company has paid the same in other units but due to adamant attitude of the respondent, no settlement was arrived at between the parties and ultimately the case of the petitioner has been sent to this Court for adjudication. It has further been stated that the demand raised by the workers through its union is genuine and the same deserves to be allowed as prayed in the demand notice dated 4.12.2010. Due to heavy inflation and increase in the profit of the company for the year, 2010 bonus @ 20% deserves to be paid to the workers. The respondent company intentionally and knowingly had not accepted the demand of bonus of the workers and the company is bound to pay the bonus to the workers as the profit of the company has increased and the maximum limit of the bonus is up to ₹ 8400/- as per the government notification. It is also stated that by not allowing the demand of the workers, the respondent company is involved in unfair labour practice as the work load on the workers has increased number of times and the workers are doing increased work but they are not being paid the bonus as per the profit. The respondent management had transferred some of the workers to Baddi with intention to deprive all the workers from taking the benefits of earlier settlement arrived at between the workers union and management and also from the fresh settlement likely to be arrived at between the parties and the respondent management is bound to settle the demand of the workers working at Parwanoo as well as at Baddi being the member of the petitioner union. Against this back-drop a prayer has been made that the respondent be directed to pay the bonus @ 20% to the workers working at Parwanoo as well as Baddi as raised in the demand notice dated 4.12.2010.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability etc. On merits, it has been asserted that the respondent company used to pay the bonus to the workers in terms of section 10 & 11 of Payment of Bonus Act, 1965 (hereinafter referred as to Act) and the workers cannot claim bonus contrary to the provisions of Payment of Bonus Act. It is further asserted that on account of recession in the world in watch market the respondent was most effected and during 2009-2010 there was more than 50% reduction in the business and the company in order to keep up the morale of its employees in addition to provide bonus of 8.33% decided to make Ex-gratia payment of an amount of 10% as a good will gesture and as such the workers got an amount of 18.33% including of bonus and Ex-gratia payment on 3.11.2010. The bonus has rightly been made as per the Payment of Bonus Act and the respondent has its three units and each unit is a separate and independent entity/ manufacturing unit/ establishment/ managing its own affairs/ resources and having its own productions facilities, purchase, sales, funds flow and profitability and each unit is managed by the team of different set of managerial staff and other employees and each unit has its own account. It is also asserted that making of payment as per the provisions of Payment of Bonus Act does not mean that the company adopted unfair labour practice and by raising demand notice the petitioner is trying to harass the management and twist its arm which amounts to nothing less than unfair labour practice on the part of the petitioner union and even the demand notice raised by the petitioner union is neither competent nor maintainable. It is submitted that the workers have been transferred from Parwanoo to Baddi units as per the business exigencies and requirements and the transfer is an incidence of service and was effected as per the appointment letter and Certified Standing orders of the company. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 20.7.2013.

1. Whether the demands raised by Kamla Dails Workers Union vide demand notice dated 4.12.2010 are proper and justified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief the aggrieved workmen are entitled to? ...OPP.

3. Whether this petition is not maintainable as alleged?

...OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

### ***Reasons for findings***

#### ***Issues no.1.***

8. To prove issue no.1, the petitioner union examined two PWs. Shri Vijay Kumar has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averment as stated in the claim petition. He also tendered in evidence the copy of demand notice dated 4.12.2010 Ex. PW-1/B, the copy of resolution Ex. PW-1/C and the copy of proceedings dated 2.12.2010 Ex. PW-1/D. In cross-examination, he admitted that the management had filed the reply to the demand notice Ex. PW-1/B vide Ex. RP. He further admitted that the workers union is with respect to the unit which is situated at Parwanoo and that Parwanoo unit and Baddi unit are different. He denied that the fund flow, profitability and accounts are also separate. He further denied that during the year 2009-2010, the financial health of the company had deteriorated and even the supply orders had done less than half. He admitted that in order to keep the morale of the workers high, the company during the year, 2009-10 had given bonus @ 8.33 and that during the year, 2009-10, ex-gratia of 10% was given to the workers. He denied that bonus had been given as per the bonus Act and as well as the profitability and allocable surplus available with the respondent unit.

9. PW-2 Shri Mangal Ram has also tendered in evidence his affidavit Ex. PW-2/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that bonus @ 8.33% was given to the workers at Parwanoo and Baddi units. He denied that there had been recession in the watch industry since 2008. He admitted that Bagwania unit has no workers union.

10. On the other hand, the respondent has examined one Shri Parveen Kumar Sabharwal, Authorized Signatory as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B, reply dated 11.2.2011 mark X, notice dated 30.10.2010 mark Y, another notice dated 30.10.2010 mark Z, calculation of allocable surplus by charter accountant as on 31.3.2010 and balance sheet of Parwanoo unit mark Z-1 and mark Z-2 respectively, office orders dated 13.10.2009, 29.10.2010, 8.11.2012, 24.10.2013 and 14.10.2014 issued by KDDL Ltd., (Corporate Office) giving different percentage of bonus to different units mark Z-3 to mark Z-7. In cross-

examination, he admitted that Parwanoo unit, as well as Baddi unit, have separate factory manager. He admitted that annual report of KDDL for the year, 2009-2010 is Ex. PX and the consolidated balance sheet of all units is published in the annual report. He further admitted that the financial profit and loss account of the company is calculated after taking into account the consolidated profits and loss account of all the units. He denied that the bonus is paid to the workers after calculating the consolidated profit of all the units. He admitted that the workers at Dera Bassi unit were given 20% bonus for the year, 2009-10. He denied that the bonus is to be calculated on the profit and loss account of the company and not on the profit and loss account of each unit separately. He further denied that the workers at Parwanoo unit and Baddi unit are entitled for the bonus @ 20% for the year, 2009-10. He admitted that the ex-gratia @ 10% was only paid to the workers who were on the rolls of the company on 30.10.2010 including the transferred workers and the same was not paid to the workers who had retired prior to the year, 2010.

11. The learned counsel for the petitioner contended that the demands raised by the workers through its union for the payment of bonus @ 20% for the year, 2009-10 vide demand notice dated 4.12.2010 is genuine and as due to heavy inflation and increase in the profit of the company for the year, 2010, the bonus @ 20% deserves to be paid to the workers. He further contended that the respondent has discriminated against the workers of the petitioner union as in other units of the company, the respondent has paid bonus @ 20% to its workers.

12. On the other hand, the learned counsel for the respondent contended that the bonus has rightly been paid for the year 2009-10 as per the Act and the workers cannot claim bonus contrary to the provisions of Payment of Bonus Act, 1965 (hereinafter referred as Act). He further contended that the respondent had paid the bonus @ 8.33 % to its workers in addition to an amount of 10% as ex-gratia payment as a good will gesture and thus the workers got an amount of 18.33%.

13. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof it has become clear that by way of demand notice Ex. PW-1/B dated 4.12.2010, Kamla Dial Workers union, Parwanoo, District Solan has demanded the bonus @ 20% for the year 2009-10. It is the admitted case of the petitioner union that bonus was paid for the year, 2009-10 @ 8.33% and in addition to it an ex-gratia amount @ 10% was also paid by the respondent company to its workers. From the evidence on record, it has become clear that both the units of the respondent company *i.e* KDDL unit at Parwanoo and KDDL unit at Bagbania are separate units and have separate balance sheets, profit and loss accounts and separate factory license. During cross-examination, it has been admitted by PW-1 that Parwanoo unit and Baddi unit are different. It has been categorically stated by RW-1 Parveen Sasbharwal that each unit of KDDL is a separate and distinct unit, managing its own affairs, resources and having its own production facilities, projects, sale and profitability and each unit is a separate entity having no functional integrity with each other. He also deposed that each unit of KDDL is giving bonus as per the provisions of the Act and its profitability and allocable surplus. No evidence to the contrary has been led by the petitioner in order to prove that each unit of KDL is not a separate unit and is having no separate entity. From the perusal of the office orders Ex. Z-3 to Ex. Z-7, it has become clear that different percentage of bonus has been paid to the workers of different units depending upon the allocable surplus and profitability of each unit. Therefore, the contention of the learned counsel for the petitioner that the workers of the petitioner union have been discriminated against is devoid of any force.

14. Section 10 of the Act provides for the payment of minimum bonus @ 8.33% whereas section 11 provides for the payment of maximum bonus. At this stage, it would be relevant to reproduce both the aforesaid sections as under:

**"10. Payment of minimum bonus.**—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year

commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted."

"11. **Payment of maximum bonus.**—(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section."

15. Thus, from the careful perusal of both the aforesaid sections, it has become clear that a minimum bonus @ 8.33% has to be paid by the employer to every employee irrespective of the fact that whether the employer has any allocable surplus or not in the accounting year. However, section 11 provides that where allocable surplus exceeds the amount of minimum bonus then during that accounting year maximum bonus up to 20% has to be paid. The learned counsel for the respondent contended that during the relevant accounting year there was no allocable surplus and the bonus was rightly paid @ 8.33%. From the perusal of the calculation of allocable surplus mark Z-1 and balance sheet of KDDL Unit at Parwanoo mark Z-2, it cannot be said that there was any allocable surplus. Thus, it cannot be said that the workers of the petitioner union are entitled to the bonus @ 20% as contended by the learned counsel for the petitioner.

16. Therefore, from the facts and circumstances of the present case, it has become clear that the bonus @ 8.33 % for the year, 2009-10 has rightly been paid to the workers of the petitioner union by the respondent. Hence, it cannot be said that the demands raised by the Kamla Dials Workers Union vide demand notice dated 4.12.2010 are proper and justified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

## **Issue No.2**

17. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

## **Issue no.3.**

18. In support of this issue, no evidence has been led by the respondent which could go to show as to why the petition is not maintainable. Moreover, the petitioner has filed the present claim pursuant to the reference sent by the appropriate government to this Court for adjudication. Accordingly, by holding it to be maintainable, this issue is decided in favour of the petitioner and against the respondent.

## **Relief.**

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner union fails and is hereby dismissed and as such the reference is ordered to be answered in



favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 6th day of April, 2017.

(SUSHIL KUKREJA)

*Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.*

18.4.2017.

Present : None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 18.1.2017 on which date Ms. Reena Chauhan, Dy. DA appeared for respondent but none appeared for petitioner and thereafter again the notices have been issued for the service of the petitioner but despite that notices have not been received back either served or un-served. Moreover, the appropriate government has also sent a copy of the reference to the petitioner on the address provided by him during conciliation proceedings which means that he is having the knowledge about the pendency of the reference before this Court but despite that he has failed to appear before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:—

**“Whether alleged termination of services of Shri Hari Krishan S/o Shri Teka Ram R/o Village Shakra (Kharedi) P.O Shakra, Tehsil Karsog, District Mandi, HP during March, 1990 by the Executive Engineer, HPPWD Division Kumarsain District Shimla, who had worked for 63 days only during the year, 1990 as beldar on daily wages with above employer and has raised his industrial dispute after more than 22 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 63 days only and delay of more than 22 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has alleged his termination during the year, 1990 to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had worked only for 63 days during the year, 1990 and raised the present dispute after more than 22 years which seems that the petitioner is not interested to pursue

the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during 1990. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
18.4.2017.

(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NALAGARH.**

**Application No. : 10 of 2015.**

**Instituted on : 3.3.2015.**

**Decided on : 21.4.2017.**

Dharmender S/o Shri Shivacharan R/o Village Billanwali, Baddi, District Solan, HP.

*.... Petitioner.*

VS.

M/s Mountain Steels P Ltd., Buranwala, P.O Barotiwala Baddi, District Solan, HP.

*...Respondent.*

**Petition under section 2-A of the Industrial Disputes (Amended) Act, 2010.**

For petitioner : Shri A.K Sharma, AR.

For respondent : Shri Rajiv Sharma, Advocate.

**AWARD/ORDER**

Briefly the case of the petitioner is that he was employed with the respondent as welder *w.e.f.* 3.8.2013 and was drawing last wages of ₹ 8,000/- per month and his services had been terminated on 22.1.2014 arbitrarily in an unlawful manner without complying with the provisions of the Industrial Disputes Act (hereinafter referred as to Act) as neither any notice had been given to him nor he was paid compensation and even no enquiry had been conducted. It is further stated that the petitioner served demand notice dated 23.1.2014 to the respondent but due to adamant attitude of the respondent, no settlement could be arrived at during conciliation proceedings. Against this back-drop a prayer has been made that he be re-instated in service with back-wages and other consequential benefits.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is not maintainable and that the petitioner had not come to this Court with clean hands and he is gainfully employed and is earning more than

the amount which he was earning from the respondent. On merits, it has been asserted that the petitioner joined the respondent factory in the month of November, 2013 and he had not completed 240 days in one year and he had left the job at his own with his free will and intention and since he had not completed 240 days, hence, the question of notice or enquiry does not arise. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 12.1.2016.

1. Whether the termination of the services of the petitioner *w.e.f.* 22.1.2014 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP.*
3. Whether the petition is not maintainable as alleged? ...*OPR.*
4. Relief.

4. I have heard the AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Application dismissed per operative part of award/order.

### ***Reasons for findings.***

#### ***Issues no.1.***

6. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice and without paying him any compensation.

7. On the other hand, Ld. Counsel for the respondent contended that the services of the petitioner had never been terminated by the respondent who himself abandoned his job. He further contended that even he had not completed 240 days in any year with the respondent as such he is not entitled to any relief.

8. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence his disability certificate Ex. PW-1/B. In cross-examination, he denied that he joined the respondent in the month of November, 2013 and that he was not drawing ₹8,000/- per month. He further denied that he abandoned the job at his own in the month of Feb., 2014. He also denied that he had not worked for 240 days continuously.

9. The respondent has examined one Shri Manu Nikhanj, Director of the respondent company as RW-1 who stated that the petitioner joined in the month of November, 2013 and he had worked in the company upto Feb., 2014 and he abandoned the job at his own. He had not completed 240 days in the calendar year and his services were not terminated by the respondent. In crossexamination, he denied that the petitioner had joined with the respondent on 3.8.2013 and that on 9.8.2013, he met with an accident while working on the machine in the factory as a result of which his two fingers got amputated. He further denied that the services of the petitioner were terminated on 22.1.2014 as he was claiming compensation for the amputation of his fingers.

10. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent. As per the petitioner, he was engaged as welder by the respondent on 3.8.2013 but he failed to produce any record which could go to show that he was actually engaged by the respondent on 3.8.2013. The petitioner has also failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:-

***“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination as he had failed to summon any record regarding his attendance from the respondent company. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

11. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 22.1.2014 by the respondent is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

#### **Issue no.2.**

12. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

**Issue No.3.**

13. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

**Relief.**

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 21st day of April, 2017.

**(SUSHIL KUKREJA)**

*Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla  
Camp at Nalagarh.*

**18.4.2017.**

Present : None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Case called repeatedly but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court on 18.1.2017 on which date Ms. Reena Chauhan, Dy. DA appeared for respondent but none appeared for petitioner and thereafter again the notices have been issued for the service of the petitioner but despite that notices have not been received back either served or un-served. Moreover, the appropriate government has also sent a copy of the reference to the petitioner on the address provided by him during conciliation proceedings which means that he is having the knowledge about the pendency of the reference before this Court but despite that he has failed to appear before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file. The following reference has been received from appropriate government for adjudication:

**“Whether alleged termination of services of Shri Narain Singh S/o Shri Anant Ram R/o Village Chhabldi, P.O Gumma, Tehsil & District Shimla HP during December, 1993 by the Divisional Forest Officer, Forest Division Shimla, HP who has raised his industrial dispute after about 20 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the contention of the employer i.e Forest Department that Shri Narain Singh S/o Shri Anant Ram had never worked with them during alleged period of dispute and delay of about 20 years in raising the industrial dispute, what amount of back-wages,**

**seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

From the aforesaid reference is the clear that the petitioner has alleged his termination during December, 1993 to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had raised the present dispute after about 20 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during December, 1993. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
18.4.2017.

(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

**26.4.2017.**

Present : None for petitioner.

Shri Rajiv Sharma, Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for the cross-examination of petitioner but neither the petitioner nor his Advocate has put in appearance before this court. From the perusal of record, it is crystal clear that issues in this case have been framed on 19.4.2016 and thereafter, the case has been listed for the evidence of the petitioner on 23.5.2016 on which date at the request of learned counsel for the petitioner, the case was adjourned for PWs on 25.7.2016 on which date, the petitioner tendered his affidavit in evidence and the case was adjourned for the cross-examination of petitioner and his remaining evidence for 14.9.2016 but after availing so many opportunities for cross-examination and remaining evidence, the petitioner has failed to appear before this Court which clearly shows that he is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file. The following reference has been received from appropriate government for adjudication:

**“Whether termination of Shri Hoshiyar Singh S/o Shri Ram Krishan R/o VPO Baih, Tehsil Dehra, District Kangra, HP during September, 2013 by the Employer/Senior Manager M/s Zamil Air Conditioners Private Ltd., Village Dhaddi Kanian adjoining HP State Centre Tehsil Nalagarh, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? IF not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

From the aforesaid reference it is clear that the petitioner has alleged his termination during September, 2013 by the respondent to be illegal and unjustified. However, the petitioner has failed to subject himself for cross-examination despite repeated opportunities and had failed to lead any

other evidence in support of his case. Moreover, today, neither the petitioner nor his counsel has put in appearance before this Court. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that services of the petitioner during September, 2013 have been terminated illegally by the respondent without complying with the provisions of the Industrial Disputes Act, 1947. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
26.4.2017.

(SUSHIL KUKREJA),  
Presiding Judge,  
Labour Court, Shimla.

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Ref. no. : 86 of 2014.**

**Instituted on : 26.12.2014.**

**Decided on : 19.4.2017.**

Kuldeep Singh S/o Shri Mahinder Singh R/o Village Ferozpur, P.O kathe Majra, Tehsil  
Naraingarh, District Ambala, Haryana. *...Petitioner.*

VS.

M/s JB Rolling Mills Ltd., Trilokpur Road, Kala Amb, Tehsil Nahan, District Sirmour, HP.  
*...Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Ms. Anita Goonta, Advocate.

For respondent : Shri Kulwant Chauhan, Advocate vice csl. Shri Ajay Vaidya, Advocate.

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

***"Whether termination of the services of Shri Kuldeep Singh S/o Shri Mohinder Singh R/o Village Ferozpur, P.O Kathe Majra, Tehsil Naraingarh, District Ambala, Haryana w.e.f. 4.7.2013 by the employer M/s J.B Rolling Mills Ltd., Trilokpur Road Kala Amb, Tehsil Nahan District Sirmour, HP is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"***

2. In nutshell the case of the petitioner is that he was employed by the respondent since 2010 as a fitter on the monthly salary of ` 12000/- and on 26.10.2011 while on duty, unfortunately

he had met with an accident resulting in severing of his right leg and left leg being injured severely and thereafter initially he was admitted in Sneh Hospital, Kala Amb from where he was referred to PGI Chandigarh from where he was discharged on 9.11.2011. It is further stated that on the return of the petitioner, the owner of the respondent company in connivance with the ESI Manager Smt. Savita Dua prepared certain documents purporting to be the claim papers of the workman and illegally showed the petitioner to be an employee of M/s Ambica Alloys, Kala Amb which is also a concern owned and run by Shri Surinder Jain and on protest by the petitioner, he was assured that due to some legal hindrances in clearing his claim, it was necessary to show him as an employee of M/s Ambica Alloys and he would be re-employed on his previous salary and benefits besides providing him artificial limb and that too on the cost of the employer and as such the petitioner succumbed to such sweet assurances of the employer and the officials of ESI. It is further stated that in the month of Jan., 2013, after recovery, the petitioner was re-employed by the respondent on the assurance that he would be given the same salary as he used to get as a fitter but he was paid a sum of ₹ 5800/- only and enquiry, he was told that since a lot of money had been spent on providing him treatment, hence, the amount was being deducted from his salary. The petitioner was asked to deposit a sum of ₹ one lakh for the limb which amount he had deposited with the respondent in good faith and on his assurance in two installments of ₹ 50,000/- each on 21.9.2012 and 12.12.2012 in the presence of his brother Shri Sanjeev Kumar after withdrawing the same from his bank and on protest Shri Surinder Jain refused to listen to him and all of a sudden on 4.7.2013, the services of the petitioner were terminated. The action of the respondent in terminating the services of the petitioner without any notice is against the mandatory provisions of section 25-F of the Industrial Disputes act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that he be reinstated in service with all the consequential service benefits besides return the amount taken from the petitioner on the pretext of providing artificial limb.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objection has been taken that the claim petition is neither competent nor maintainable. On merits, it has been denied that the petitioner was ever engaged or employed with the respondent company as fitter and he was being paid salary of ₹ 12000/- per month. It is further denied that the petitioner met with an accident resulting in severing of his right leg being injured severely on 26.10.2011. It is also denied that the owner of the company in connivance with Ms. Savit Dua Manager ESI prepared certain documents purporting to be claim papers of the petitioner and illegally and fraudulently showed the workman to be an employee of M/s Amba Alloy Kala Amb. It is asserted that when the petitioner was not working with the respondent, hence, the question of his re-employment does not arise at all. It is denied that the petitioner had deposited ` one lakh for limb in the presence of Sanjev Kumar. It is further denied that the section 25-F, 25-G and 25-H of the Act are applicable in the present lies in any manner when the petitioner was never employed by the respondent. The respondent prayed or the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 30.11.2016.

11. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 4.7.2013 is illegal and unjustified as alleged? ....*OPP.*
12. If issue no.1 is proved in affirmative, to what relief the applicant is entitled to? ... *OPP.*
13. Whether the claim petition is neither competent nor maintainable as alleged? ...*OPR.*



## 14. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to lump sum compensation of ₹ 1,50,000/- ( ₹ One lakhs and fifty thousand only)
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent r operative part of award.

***Reasons for findings.******Issue no.1.***

8. To prove issue no.1, the petitioner appeared into the witness box as PW-1 to depose that he was working as a fitter with the respondent company since the year, 2010 and he was drawing salary of ₹ 12,000/- per month. He further deposed that on 26.10.2011 at about 4 AM, when he was discharging his duties, he met with an accident in the factory premises, resulting in amputation of his right leg and injury to left leg and he was immediately rushed to Sneh hospital at Kala Amb by his colleague Shri Amar Jeet from where he was referred to PGI Chandigarh and on 9.11.2011, as per discharge slip Ex. PW-1/A, he was discharged from PGI. Ex. PW-1/B is OPD slip of ESI Dispensary and Ex. PW-1/C is his ESI card which pertains to Ambika Alloys though he was working with JB Rolling. He also deposed that the ESI Card was prepared in connivance with Savita Dua, the ESI Manager at Kala Amb and on protest, he was re-instated in Jan., 2013 by giving work at Kanta in JB Rolling Mills and he was offered a salary of ₹ 12000/- per month but he was only paid ₹ 5800 per month. He also gave ₹ 1,00,000/- which he received from ESI for artificial leg. Ex. PW-1/D-1 to Ex. PW-1/D-5 are the copies of quotations which the company had called and as such he deposited ` one lakh in two installments of ₹ 50,000/- each on 21.9.2012 and 12.12.2012 but no artificial leg was provided to him and on protest, his services were terminated on 4.7.2013 without serving him any notice or paying him any compensation. In cross-examination, he denied that at the time of accident, he was not working with the respondent company. He further denied that at the time of accident, he was working with Ambika Alloys.

9. On the other hand, the respondent examined one Shri Laxmi Chand as RW-1 who deposed that the petitioner was never the employee of the respondent company and they came to know about the accident of the petitioner from the enquiry held by Dy. S.P and in that enquiry it was found that the petitioner was the employee of Ambika Alloys and the respondent company had never paid any compensation to the petitioner. In cross-examination, he admitted that no authority letter has been annexed with the reply. He further admitted that the enquiry of Dy. S.P is not on record. He denied that J.B Rolling Mills and Ambika Alloys are owned by one and the same person. He further denied that quotations were called by the respondent company for artificial leg of the petitioner. He also denied that letter Ex. PW-1/D-5 was written by the respondent company.

10. The learned counsel for the petitioner contended that the petitioner was in the employment of the respondent since the year, 2010 and on 26.10.2011, he met with an accident

during the course of employment resulting in amputation of his right leg. He further contended that after recovery from the accident, he was re-employed by the respondent in the month of Jan., 2013 but on 4.7.2013 all of a sudden his services were terminated without complying with the mandatory provisions of section 25-F of the Act.

11. On the other hand, the learned counsel for the respondent contended that the petitioner was never engaged and he had never worked with the respondent. He further contended that the petitioner never met with an accident during the course of employment and the story concocted by the petitioner is baseless and fabricated.

12. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof it has become clear that the petitioner was working as a fitter with the respondent company since the year, 2010 and on 26.10.2011, he met with an accident during the course of employment in the factory premises resulting in amputation of his right leg. From the perusal of the discharge slip of PGI Chandigarh Ex. PW-1/A and OPD slip of ESI Hospital Ex. PW-1/B, it has become clear that the petitioner sustained machine injuries on 26.10.2011. It was for the respondent to prove that the petitioner was not his employee and he did not sustain any injury during the course of his employment. However, except for the bald statement of RW-1, there is no evidence on record to suggest that the petitioner was never the employee of respondent company. In his deposition before this Court, RW-1 has stated that they came to know about the accident of the petitioner from the enquiry held by Dy. S.P, however, the enquiry of Dy. S.P is not on the record of the case as admitted by him in the cross-examination. No record has been produced by the respondent regarding the names of workmen on the rolls of the company from the year, 2010 onwards. It was for the respondent to produce on record the list of workmen on the rolls of the company from the year, 2010 onwards. However, for the reasons best known to the respondent, he has failed to produce the record in this respect. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the petitioner was never the employee of the respondent company. Rather, the quotations/letters Ex. PW-1/D-1 to Ex. PW-1/D-5, show that the respondent had called for the quotations from the limb centers for providing artificial limb to the petitioner. The letter Ex. PW-1/D-5 is on the letter head of the respondent company which has been addressed to ESI dispensary wherein it has been mentioned as under:

"We would like to inform you that Mr. Kuldeep S/o Shri Mahinder Singh bearing INS No.1415207562 was met with an accident dated 26.10.2011 while he was on duty and we admitted him in PGI Chandigarh. During with the treatment his leg amputates so badly caused and treatment was commuting up to dated 9.11.2011. Now, the PGI Doctor advice to fit the artificial leg from limb center. So we have three quotation of limb center as given below:

1. DEEP ARTIFICIAL LIMB CENTER.
2. ENDOLITE INDIA LTD.
3. HOPE REHABILITATION SOCIETY.

The quotation is attached herewith for your kind reference. The payment is to be made through demand draft as per the quotation in favour as below:

1. DEEP ARTIFICIAL LIMB CENTER.
2. ENDOLITE INDIA LTD.
3. HOPE REHABILITATION SOCIETY.

Kindly sanction the above amount at the earliest so that artificial leg may be provide to the insured person as soon as possible."

Therefore, from the aforesaid letter Ex. PW-1/D-5 on record, it has become clear that the petitioner met with an accident on 26.10.2011 while he was on duty and the respondent admitted him in PGI Chandigarh and thereafter the respondent had called for the quotations for providing artificial leg to the petitioner. Had the petitioner not been the employee of the respondent, there was no occasion for the respondent to admit him in PGI Chandigarh and to call for the quotation for providing him artificial leg. The respondent has failed to explain as to why the petitioner was got admitted by him at PGI Chandigarh and why the respondent had called for the quotations for providing him artificial leg. Therefore, in the absence of any explanation, it cannot be said that the petitioner was not the employee of respondent.

13. From the statement of the petitioner, it has become clear that he had worked continuously with the respondent from the year, 2010 till 26.10.2011 when he met with an accident and thereafter, he was re-engaged during the month of Jan., 2013 and his services were terminated on 4.7.2013. The aforesaid facts would show that the petitioner had completed 240 days in a calendar year. No evidence to the contrary has been led by the respondent that the petitioner had not completed 240 days in a calendar year. Even, the petitioner has not been cross-examined on this aspect of the matter. Therefore, in view of the facts and circumstances of the present case, it has become clear that the petitioner had completed 240 days in a calendar year and the provisions of section 25-F of the Act are attracted to the present case. Admittedly, neither any notice was issued to the petitioner nor any compensation was paid to him before terminating his services. It was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

"34. ....**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.**"

14. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 4.7.2013 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. The learned counsel for the petitioner also contended that since the petitioner was asked to deposit a sum of ₹ one lakh for artificial limb by the respondent, therefore, he deposited

₹ one lakh in two installments of ₹ 50,000/- each on 21.9.2012 and 12.12.2012 but no artificial limb was provided to him as such this amount may be returned to him. However, this Court cannot go beyond the terms of reference. It is a settled law that the jurisdiction of the Industrial Court to decide the industrial disputes is determined by the terms of reference. Where in an order referring an industrial dispute to a Tribunal under section 10 (1) of the Act, the appropriate government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of dispute referred to it but must confine its adjudication to the points specifically mentioned and anything which is incidental thereto. The jurisdiction of the Tribunal is circumscribed by the terms of reference and not by the pleadings of the parties. In **(2004) 10 SCC 460, Mukand Ltd Vs. Mukand Staff and Officers Association**, the Hon'ble Supreme Court has held that the Labour Court is the creature of the reference and cannot travel beyond the terms of reference. The relevant portion of the aforesaid judgment is reproduced as under:

"36. We, therefore, hold that the reference is limited to the dispute between the Company and the Workmen employed by them and that the Tribunal, being the creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. In the present case also as observed earlier, as per the terms of reference the point of dispute between the parties is as to whether the termination of the services of the petitioner *w.e.f.* 4.7.2013 by the respondent is legal and justified. Therefore, in view of the law laid down by the Hon'ble Supreme Court, this Court has no jurisdiction to go beyond the reference and inquire into the question as to whether the petitioner had paid ₹ one lakh and is entitled to get back the same from the respondent.

16. Therefore, in view of my foregoing discussion, it can safely be held that the termination of the services of the petitioner *w.e.f.* 4.7.2013 by the respondent is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

### ***Issue no.2.***

17. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Now, it has to be seen as to what service benefits the petitioner is entitled. The Hon'ble Supreme Court in case of Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

18. In case reported in (2009) 15 SCC 327 titled as Jagbir Singh Vs. Haryana State Agricultural Marketing Board it was held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

19. In (2010) 6 SCC 773 titled as **Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Ors.**, the Hon'ble Supreme Court has held as under:

“9. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.....”

20. Thus, the aforesaid decisions of the Hon'ble Supreme Court make it abundantly clear that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure and compensation instead of reinstatement has been held to meet the ends of justice.

21. In the instant case, the petitioner was engaged by the respondent since 2010 as fitter and he worked as such till 4.7.2013 and he lost his right leg while sustaining injuries during the course of employment. The petitioner was a technical hand and now after amputation of his right leg, he may not be in a position to work as a fitter and to do technical job. Therefore, in such a situation it would be in the interest of justice to grant him lump sum compensation instead of reinstating him in service as the grant of monetary compensation to him will sub-serve the ends of justice. Therefore, the compensation amount instead of reinstatement is assessed at ₹ 1,50,000/- (₹ One lakhs and fifty thousand only) which shall be appropriate, just and equitable. Accordingly, issue no.1 is answered in favour of the petitioner and against the respondent.

**Issue No.3.**

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

**Relief.**

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to compensation of ₹ 1,50,000/- (₹ One lakhs and fifty thousand only). Such payment shall be made within six weeks from today failing which the same shall carry interest at the rate of 9% per annum from the date of award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 19th Day of April, 2017.

*Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.*

17.4.2017.

**Present :** None for petitioner.

None for respondent no.1.

Shri Ajay Kumar, AR for respondent no.2.

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Ms. Shilpa Kumari, Advocate for respondent no.3.

Case called thrice but none appeared on behalf of petitioner. It is 10:40 AM. Be awaited.

**SUSHIL KUKREJA,**  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again.**

**Present :** None for petitioner.

None for respondent no.1.

Shri Ajay Kumar, AR for respondent no.2.

Ms. ShilpaKumari, Advocate for respondent no.3.

It is 12:25 PM. Case called again but none appeared on behalf of petitioner. **Be** called after lunch.

**SUSHIL KUKREJA,**  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch.**

**Present :** None for petitioner.

None for respondent no.1.

Shri Ajay Kumar, AR for respondent no.2.

Ms. ShilpaKumari, Advocate for respondent no.3.

It is 3:10 PM. Case called repeatedly in pre and post lunch sessions but none appeared for petitioner despite the fact that on the previous date of hearing the petitioner appeared in person which shows that the petitioner is not interested to pursue this case. Therefore, to further adjourn the case would be a futile exercise. The following reference qua the termination of services of petitioner was received from appropriate government for adjudication:

**“Whether termination of the services of Shri Aman Sood C/o Dr. O.P Sharma, New Vipul Gas Agency, Hospital road Solan (HP) w.e.f. 7.7.2012 by the i) The General Manager M/s Wirlpool India Ltd., SCO 910 NAC Manimajra, Chandigarh (Principal Employer), ii) The Managing Director M/s team Lease Services Pvt. Ltd., 6th Floor, BMTC Commercial Complex 80F Road Koramangala, Bangalore 670095 (sister Concern) and iii) The Managing Director M/s Adecco India Pvt. Ltd., N-2, Nal Wind**

**Tunnel Road Murugeshpaiya Banglore 500017 (sister concern) without complying with the provisions of the Industrial Disputes Act, 1947 and thereafter offering him work on bill basis is legal and justified? If not, to what relief of reinstatement and compensation the above aggrieved workman is entitled to from the above employer?"**

However, in the absence of any claim petition and any material in support thereof by the petitioner, it cannot be held that his services were wrongly and illegally terminated by the respondents. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette.

File, after completion be consigned to records.

Announced:  
17.4.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*Labour Court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. VivekKalia, Ld. Csl. with sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties. It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.20,000/- (Twenty Thousand Only) by way of cheque No-001107 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 47 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever. It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.20,000/- (Twenty Thousand Only) by way of cheque No-001107 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 47 of 2012. Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,H.P.*  
*Industrial Tribunal-cum-Labour court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. VivekKalia, Ld. Csl. with sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties. It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001111 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 48 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever. It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001111 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 48 of 2012. Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. VivekKalia, Ld. Csl. with sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties. It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001112 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 49 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever. It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001112 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 49 of 2012. Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.



File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

**10.04.2017**

**Present :** Shri Satish Bhatia, President of workers union with Sh. J.C. Bhardwaj, AR.

Sh. Vivek Kalia, Ld. Csl. with Sh. Rakesh Sharma, EA to C.M.D for respondent.

At this stage, it has been stated by Shri Satish Bhatia, President of the base corporation employees and workers union that the petitioner union had entered into an out of Court settlement with the respondent management under section 18(1) of the Industrial Disputes Act, 1947, the copy of which is Ex. C-1, vide which all the issues raised in reference no. 60 of 2011 have been settled. He further stated that in lieu of the aforesaid settlement, he has received cheques of all the workmen pertaining to the settlement and now the petitioner union has no dispute and claim with the respondent management pertaining to the reference no. 60 of 2011 in any manner whatsoever and the reference be decided in terms of settlement Ex. C-1. To this effect his statement recorded separately. Vide separate statement, it has been stated by Shri J.C Bhardwaj, AR for the petitioner union that the petitioner union had entered into an out of Court settlement with the respondent management under section 18(1) of the Industrial Disputes Act, 1947, the copy of which is Ex. C-1, vide which all the issues raised in reference no. 60 of 2011 have been settled. He further stated that in lieu of the aforesaid settlement, he has received cheques of all the workmen pertaining to the settlement and now the petitioner union has no dispute and claim with the respondent management pertaining to the reference no. 60 of 2011 in any manner whatsoever and the reference be decided in terms of settlement Ex. C-1.

It has been stated by Shri Rakesh Sharma, EA to CMD, respondent company that the respondent had entered into a settlement with the petitioner union vide settlement Ex. C-1 and had settled all the issues with the petitioner union which have been raised vide reference no. 60 of 2011. He further stated that the respondent had handed over the cheques of all the workmen mentioned in the list Annexure A attached with the settlement Ex. C-1 pertaining to their settlement amount in lieu of full & final settlement of their claim and the reference be decided accordingly. To this effect, his statement also recorded separately. Therefore, in view of the aforesaid statements and also in view of the settlement Ex. C-1, I am satisfied that a lawful compromise has been effected between the parties, hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties and also in terms of settlement Ex. C-1, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**SUSHIL KUKREJA,**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour Court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. VivekKalia, Ld. Csl. with sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties.

It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001109 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 54 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever. It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001109 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 54 of 2012.

Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. VivekKalia, Ld. Csl. with sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties.

It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001114 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 55 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever.

It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of

Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001114 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 55 of 2012.

Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**SUSHIL KUKREJA,**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

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**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. Vivek Kalia, Ld. Csl. with Sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties. It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001110 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 56 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever.

It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001110 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 56 of 2012.

Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after, completion, be consigned to records.

Announced:  
10.04.2017

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

**10.04.2017**

Present : Sh. J.C. Bhardwaj, AR for the petitioner.

Sh. Vivek Kalia, Ld. Csl. with Sh. Rakesh Sharma, EA to C.M.D for respondent.

It has been stated by the AR for the petitioner and Ld. Csl. for the respondent that the matter has been settled between the parties. It has been stated by Sh. J. C. Bhardwaj, AR for the petitioner that the petitioner is ready and willing to accept a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001108 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of the reference no. 57 of 2012. He further stated that the petitioner shall have no further claim against the respondent thereafter in any manner whatsoever.

It has been stated by Sh. Rakesh Sharma, EA to C.M.D, Base Corporation Limited, Solan that the respondent had entered into a settlement with the petitioner and paid to him a sum of Rs.18,000/- (Eighteen Thousand Only) by way of cheque No-001108 dated 10.04.2017 drawn on ICICI Bank, Solan Branch in lieu of full and final settlement of the claim arising out of reference number 57 of 2012.

Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette.

File, after, completion, be consigned to records.

Announced:  
10.04.2017.

**(SUSHIL KUKREJA),**  
*Presiding Judge,*  
*H.P.Industrial Tribunal-cum-Labour court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Ref no. : 171 of 2006.**

**Instituted on : 19.12.2006.**

**Decided on : 28.4.2017.**

Jai Lal S/o Shri Chaina Ram R/o Village Anu, P.O Gumma, Tehsil Kothkhai, District Shimla, HP. *...Petitioner.*

VS.

The Executive Engineer, HP PWD Division Jubbal, District Shimla, HP. *...Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner : Shri R.K Khidtta, Advocate.

For respondent : Ms. Reena Chauhan, Dy. DA.

### AWARD

The reference for adjudication, sent by the appropriate government, is as under:

**"Whether the workman Shri Jia Lal S/o Shri Chaina Ram is entitled for wages for the period *w.e.f.* 1.1.1994 to 15.4.1999 from Executive Engineer, HPPWD Division Jubbal, District Shimla HP on the grounds that his attendance / presence was marked and further general prodigient fund deduction were made till he had completed 60 years on attaining the age of superannuation on 30.6.2000 is proper and justified? If yes, what relief of back-wages and service benefits Shri Jia Lal workman is entitled from the above said employer?"**

2. In nutshell the case of the petitioner is that he was engaged as beldar by the respondent department in the year, 1965 and he was given the work charge status in the year, 1980 and worked as such till 30.6.2000 and his work and conduct remained up to the satisfaction of the official of the department. It is further stated that the petitioner had worked continuously and regularly with the respondent but the wages for the period *w.e.f.* 1.1.1994 to 15.4.1999 were not paid to him and he visited the office of respondent number of times but of no consequence and then the petitioner filed an application under section 33-C (2) of the industrial Disputes Act, 1947 (hereinafter referred to as Act) in the year, 1999 which was withdrawn by him on 24.12.2003 with liberty to approach the appropriate authority on the same cause of action and thereafter he raised demand notice on 30.12.2003 but due to adamant attitude of the respondent the conciliation proceedings failed. Even, earlier the respondent did not pay the wages of the petitioner for the period March, 1992 to December, 1994 and then he filed OA no. 238/1994 before the Administrative Tribunal and it was ordered to release the wages of the petitioner. The respondent has no right to withheld the wages/salary of the petitioner and non-payment of the same tantamount to unfair labour practice and even the wages of the petitioner *w.e.f.* 1.1.1994 to 15.4.1999 had been withhold without any reason, hence, the department is liable to pay the same to him. It is also stated that the petitioner worked during the period in question due to that reason his GPF was deducted for the period by the department. Against this back-ground a prayer has been made that the respondent department be directed to pay the wages/salary of the petitioner for the period *w.e.f.* 1.1.1994 tom 15.4.1999 with 12 % interest.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, suppression of material facts and barred by limitation. On merits, it has been admitted that the petitioner was appointed as work-charged beldar on 6.11.1980 and that he had attained the age of superannuation on 30.6.2000 but owing his constant willful absence from government duty *w.e.f.* 1.4.1993 to the date of his superannuation and he was relieved off in absentia and after conducting the disciplinary proceedings, the petitioner was dismissed from service. It is further asserted that the work of the petitioner was quite un-satisfactory and used not to do the work as per the directions of the Junior Engineer/Assistant Engineer and was in the habit of remaining willful absent from government duty. The petitioner remained willful absent for the period *w.e.f.* 1.3.1992 to 8.8.1992, 1.9.1992 to 30.9.1992, 1.12.1992 to 31.12.1992 and from 1.4.1993 till the date of his superannuation without any permission/sanction and intimation. The Administrative Tribunal after perusing the detail found the same correct and dropped the contempt proceedings. It is also asserted that the petitioner neither submitted the reply to chargesheet nor appeared before the enquiry officer despite repeated notices issued to him, hence, the enquiry was conducted ex-parte under rule 14 (6) of the CCS (CC&A) Rules 1965 and after considering the findings of enquiry report, the petitioner was removed from service. It is admitted that the GPF amounting to ₹ 100/- was deducted from the

salary of 2/1992 and ₹ 579/- from the salary of 8/1992 and 3/1993 but the salary amounting to ₹ 1014/- & ₹ 1526/- was paid to the petitioner during 11/93 and 9/1995 through Bank Draft. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 11.1.2008.

1. Whether the petitioner is entitled for his wages and GPF and other service benefits *w.e.f.* 1.1.1994 to 15.4.1999 on the ground of attendance marked? If so, its effect? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled? ...*OPP.*
3. Whether the petition in the present form is not maintainable? ...*OPR.*
4. Whether the petition is barred by limitation? ...*OPR.*
5. Relief.

6. I have heard the learned counsel for the petitioner and learned Dy. DA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1      No.

Issue no.2      Becomes redundant.

Issue no.3      No.

Issue no.4      No.

Relief.              Reference answered in favour of the respondent and against the petitioner per operative part of award.

### ***Reasons for findings.***

#### ***Issues no.1.***

8. The learned counsel for the petitioner contended that the petitioner had worked continuously and regularly with the respondent but the respondent had not paid the wages to the petitioner for the period *w.e.f.* 1.1.1994 to 15.4.1999 which act on the part of the respondent tantamounts to unfair labour practice and this action of the respondent is against the provisions of the Industrial Disputes Act, 1947.

9. On the other hand, Ld. Dy. DA for the respondent contended that the petitioner remained willful absent from his duties/work for the period *w.e.f.* 1.4.1993 till date of his

superannuation *i.e.* 30.6.2000 and a regular enquiry was held against the petitioner in which he was found guilty of the charges of willful absence from the work on the basis of which major penalty of dismissal from service was imposed upon him as such the petitioner is not entitled to any wages *w.e.f.* 1.1.1994 to 15.4.1999.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as stated in the claim petition. He also deposed that during his service, he used to mark his presence in the duty register which was to be verified by the concerned JE and SDO but in his case the duty register was not verified by them. Mark P-1 to mark P-61 are the copies of attendance register, the copy of case filed before the Administrative Tribunal is mark P-62, mark P-63 to mark P-65 are the copies of deduction of GPF from his pay. In cross-examination, he denied that the muster roll is being maintained by the T-mate. He admitted that the form of attendance register is similar to the attendance copy Ex. R-1. He admitted that after march, 1993 till December, 1999, his attendance was not verified by the JE and SDO. He denied that he made fake entries of mark P-1 to mark P-61. He admitted that the department issued a letter to him which was replied by him. He denied that he did not join the enquiry despite service and that he refused to accept the RAD letters sent by the department.

11. Shri Mani Ram has stepped into the witness box as PW-2 to depose that he was engaged as beldar in 1980 at Kothkhai and when he was engaged in service Jiya Lal was not in service. He also worked in Gumma Sub Division but he did not see Jiya Lal working in HPPWD at Gumma. In cross-examination, he admitted that he had not seen the petitioner while working in PWD Gumma *w.e.f.* 1.1.1994 to 15.4.1999. He further admitted that the Mate, Supervisor, JE and AE used to verify the attendance of the labour.

12. PW-3 Shri Vidya Sagar, Store Clerk, HPPWD Kothkhai has stated that the petitioner was engaged as beldar on daily wages and was made work charge on 6.11.1980 and there is no record with the department which could show that till which period the petitioner worked with the department. The department had retired the petitioner on 30.6.2000 and he was not paid the wages *w.e.f.* 1.1.1994 to 15.4.1999 as he did not work with the department. He further depose that the department issued letters to the petitioner to resume his duties on 28.1.1994, 5.5.1994, 14.9.1994, 4.10.1994, 5.12.1994, 28.7.1999, 18.8.1999 and 6.9.1999 and he had submitted the photocopy of his medical fitness certificate dated 11.4.2000 along-with his application dated 1.4.2000. The GPF of petitioner was deducted from his salary for the year, 1993-94, 1994-95 and 1995-96. In cross-examination, he stated that the petitioner remained absent from duty since 1992 till his retirement and he was chargesheeted on 23.2.2000 and after the enquiry, he was retired on 30.6.2000 after attaining the age of 60 years. He admitted that the petitioner did not join his duties from 1.4.1993 till his retirement and that there is no marking of presence of petitioner recorded in the attendance register since 1.4.1993 till his retirement. Vide enquiry report dated 26.8.2002 Ex. RA penalty of removal from service was imposed upon the petitioner.

13. On the other hand, the respondent examined five RWs. RW- 1 Shri Virender Rajta, JE HPPWD Hatkoti has stated that he remained posted as Junior Engineer, Kothkhai section from December, 1998 to Feb., 2004 and the Gumma section remained under his charge during his tenure. The attendance of the daily wagers and work charged workmen used to be made by the Mate and further verified by the JE concerned. He further depose that no attendance registered is being entrusted to the workmen for marking their attendance and the copies of attendance mark P-2 to P-62 placed by the petitioner on record are wrong and not verified by the JE concerned nor issued by the department. In cross-examination, he denied that the petitioner had worked as work charge employee from 1980 to 30.6.2000. He further denied that any copy was given to the work charged for their attendance which was verified by the JE and that Ex. P2 was issued by the department to

the petitioner. He admitted that Ex. P1 was issued by the department to the petitioner and that the same was verified by the Assistant Engineer till March, 1993. He also denied that he intentionally refused to verify his attendance on mark P2 to P62.

14. Shri Jagmohan Sharma stepped into the witness box as RW-2 to depose that the statement of GPF deduction is being issued by the XEN and the petitioner was paid wages for Feb., 1992 who worked for 21 days on 5.11.1993 and GPF of ₹ 100/- was deducted from his wages of Feb., 1992. Neither GPF of petitioner was deducted in the year 1994-95 nor any salary was paid to him. He was paid wages for the month 8/92 on 11.9.1995 and wages for March 1993 was paid on 11.9.1995 for 30 days and the GPF of ₹ 235/- for August, 1992 was deducted from his wages of 8/92 and GPF of ₹ 344/- was deducted for the month of 3/93 and total amount of ₹ 579/- was deducted on 11.9.1995. He further deposed that no wages for the year 1995-96 was ever paid to the petitioner as he remained absent from duties and the payment of ₹ 292/- was made to the petitioner as his leave for 21 days was sanctioned. The wages of 8/92 and 3/93 amounting to ₹1014/- and 1526/- respectively were paid to the petitioner. In crossexamination, he denied that the work charged used to mark their presence on attendance register. He admitted that the GPF is only deducted for the period when the petitioner had worked.

15. Shri Jasgdish Chand, Clerk appeared into the witness box as RW-3 to depose that the statements Ex. RA to Ex. RC are issued by the XEN PWD Jubbal. The GPF of ₹ 100/- was deducted from the wages of 2/92 and paid to the petitioner on 5.11.1993 and no GPF of petitioner was deducted in the year, 1994-95. He further deposed that the GPF of ₹ 235/- and ₹ 344/- were deducted from the wages of the petitioner for the month of 8/92 and 3/93. In cross-examination he admitted that the GPF of the workman is to be deducted for the period when he worked with the employer. He denied that the deduction is to be made for every year. He further admitted that vide Ex. RD, withdrawal of GPF of ₹ 51728/- was issued by the XEN Jubbal on 16.10.2006.

16. RW-4 Shri Lachhi Ram, Works Inspector, PWD Gumma has deposed that the attendance of workmen is to be marked by the Mate and verified by the JE concerned and the attendance register is being given by the PWD Office to the Mate. He further deposed that after recording the attendance of the workmen present, the register is to be submitted to the JE concerned and no attendance register is entrusted to the workman individually for marking their presence on duty. In crossexamination, he admitted that he does not know the case of the petitioner.

17. Shri R.K Verma, Executive Engineer, PWD Shimla appeared into the witness box as RW-5 to depose that the petitioner was made work charged beldar on 6.11.1980 and he had filed an application under section 33-C (2) of the Act which was withdrawn by him on the ground of nonmaintainability and the claim was similar to the present claim. The petitioner preferred an OA before the Administrative Tribunal which was decided on 29.3.1994 and the respondents were directed to release the wages of the petitioner found due and admissible within one month which were paid to him. Thereafter the petitioner filed contempt petition before the Administrative Tribunal and vide orders Ex. RW-5/A and Ex. RW-5/A1, the same were dropped. Ex. RW-5/A2 is the detail of payment made to the petitioner. He further deposed that the petitioner remained willfully absent from the work from 1.9.1992 to 30.9.1992 and never resumed his work w.e.f. 1.4.1993 till his superannuation on 30.6.2000 and show cause notice was issued to him for his misconduct and even he was chargesheeted in October, 1999 and then he was placed under suspension vide order Ex. RW-5/A-3 and after conducting enquiry, penalty for removal w.e.f. 1.4.1993 was imposed upon him. Since the petitioner never made himself available for enquiry despite notices, hence, the enquiry was conducted ex-parte and by that time he had attained the age of superannuation, hence, he was retired in absentia. The petitioner had never worked w.e.f. 1.4.93 to 30.4.2000 and he was found guilty under the departmental enquiry and the penalty was imposed, hence, the claim of the petitioner is baseless. He also deposed that the work of the petitioner was



never satisfactory and despite repeated opportunities, he failed to resume the duties, hence, the action of the respondent is legally valid. The muster rolls are issued by the concerned incharge of Sub Division and the attendance of workman is marked by the concerned Mate/Supervisor and further verified by the JE or AE and the workman are not given the muster roll or attendance chart to be marked by them at their own. In cross-examination, he admitted that the services of the petitioner were engaged in the year 1965 and he was given work charge status in the year 1980. He denied that the petitioner had worked upto 30.6.2000. He admitted that *w.e.f.* 1.1.1994 till 15.4.1999, he was not given wages but explained that during that period, he did not perform any work. He further admitted that *w.e.f.* March 1992 to December, 1994, the petitioner was not paid wages but explained that he was given wages for the period he worked. He denied that the attendance copy/register used to be given to the work charge worker for putting their attendance. He further denied that the enquiry was not fair and was got manipulated and that there has been violation of principles of natural justice while conducting the enquiry.

18. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was appointed as work charged beldar on 6.11.1980. The case of the petitioner is that he had worked continuously and regularly with the respondent department but wages have not been paid to him for the period *w.e.f.* 1.1.1994 to 15.4.1999. Therefore, the onus was upon the petitioner to prove by leading cogent and satisfactory evidence on record that during the aforesaid period he worked with the respondent continuously and regularly. In his deposition before this Court as PW-1, the petitioner stated that he used to mark his presence in the duty register which was to be verified by the JE and SDO concerned but in his case the register was not verified by the JE and SDO. He has also placed on record the copies of the duty register mark P-1 to Mark P-61. The perusal of the same shows that these are the photocopies and have not been signed and verified by any person. The petitioner also admitted in cross-examination that he could not say as to whether the documents mark P-1 to mark P-61 are the true copies of the attendance register Ex. R-2. He further admitted in cross-examination that after March, 1993 till December, 1999 his attendance was not verified by the JE and SDO. The petitioner has failed to give any plausible explanation as to why his attendance was not verified by the JE and SDO concerned *w.e.f.* March, 1993 till the year, 1999. Therefore, no credence can be attached to the statement of PW-1 to this effect as the copies of the attendance register mark P-1 to Mark P-61 are admittedly not verified by the JE and SDO concerned. On the other hand, RW-1 categorically deposed that the attendance of the daily wages and work charge workmen was used to be marked by the mate and further verified by the JE concerned and no attendance register is being entrusted to the workmen concerned for marking their presence. He also deposed that the copies of attendance register mark P-1 to mark P-61 placed on record by the petitioner are wrong and have not been issued by the department. RW-4, the Work Inspector also deposed that the attendance of the workmen is to be marked by the mate and verified by the JE concerned and no attendance register is entrusted to the workman individually for marking their presence on duty. Moreover, even the witness of the petitioner *i.e.* PW-2 Shri Mani Ram has categorically deposed before this Court that he never saw the petitioner while doing the work of PWD at any point of time. He could not state as to whether the petitioner had worked *w.e.f.* 1.1.1994 to 15.4.1999. PW-3, Store Clerk with the respondent also deposed that the petitioner was not paid the wages *w.e.f.* 1.1.1994 to 15.4.1999 as he did not work with the respondent department. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the attendance/ presence of the petitioner was marked for the period *w.e.f.* 1.1.1994 to 15.4.1999 and he is entitled to the wages for the aforesaid period.

19. The learned counsel for the petitioner next contended that since the petitioner had worked *w.e.f.* 1.1.1994 to 15.4.1999, therefore, the GPF of the petitioner was also deducted for the aforesaid period by the department. The petitioner also in his deposition before this Court stated that when he was in service, the department used to deduct his GPF contribution from his pay vide

mark P-63 to mark P-65. However, the case of the respondent is that the GPF of the petitioner was deducted from his salary for the period for which he had worked with the respondent. RW-2 categorically deposed that the GPF of ₹100/- was deducted from wages of Feb., 1992. He also deposed that the petitioner was paid the wages for the month of August, 1992 and March 1993 on 11.9.1995 and GPF for August 1992 in the sum of ₹ 235/- and GPF for the month of March, 1993 in the sum of ₹344/- was deducted on 11.9.1995. The aforesaid statement of RW-2 is corroborated by RW-3 who has brought the GPF record of the petitioner before this Court and as per the same the GPF of ₹ 100/- was deducted from the wages of Feb., 1992 and GPF of ₹ 235 and ₹ 344/- were deducted from the wages of the petitioner for the month of August, 1992 and March, 1993. Therefore, in view of the entire evidence on record, it cannot be said that since the petitioner had worked during the period *w.e.f.* 1.1.1994 to 15.4.1999 due to that reason the GPF was deducted for the aforesaid period.

20. It has also come in the evidence on record that since the petitioner remained willful absent from his work from 1.4.1993, disciplinary proceedings were initiated against him under Rule 14 of CCS (CCA) Rules, 1965 and chargesheet under said Rules was served upon the petitioner for major penalty and after conclusion of the departmental enquiry a major penalty was imposed upon the petitioner for his removal from service *w.e.f.* 1.4.1993.

21. Therefore, in view of the entire evidence on record, it can safely be held that the petitioner has failed to prove that he had worked with the respondent *w.e.f.* 1.1.1994 to 15.4.1999 and as such the petitioner is not entitled for any wages, GPF and any other service benefit for the aforesaid period. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

#### ***Issue no.2.***

22. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

#### ***Issue no.3.***

23. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

#### ***Issue no.4.***

24. To prove this issue no evidence has been led by the respondent which could go to show that as to how this petition is barred by limitation. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Cooperative Marketing-cum- processing Service Society Limited and Another.* that:—

***“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved***

*as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”*

Therefore, in view of the law laid down supra, it cannot be said that the petition is barred by limitation. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

### **Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 28th Day of April, 2017.

**SUSHIL KUKREJA,**  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

### **विधि विभाग**

#### **अधिसूचना**

शिमला-2, 5 जून, 2017

**संख्या: एल0एल0आर0-डी0(6)-5/2017-लेज.**—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 200 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 01-06-2017 को अनुमोदित हिमाचल प्रदेश चिकित्सीय सेवा-व्यक्ति तथा चिकित्सीय सेवा-संस्था (हिंसा और सम्पत्ति के नुकसान का निवारण) संशोधन विधेयक, 2017 (2017 का विधेयक संख्यांक 4) को वर्ष 2017 के अधिनियम संख्यांक 9 के रूप में संविधान के अनुच्छेद 348 (3) के अधीन उसके अंग्रेजी प्राधिकृत पाठ सहित हिमाचल प्रदेश ई-राजपत्र में प्रकाशित करते हैं।

आदेश द्वारा,  
(डा० बलदेव सिंह),  
प्रधान सचिव (विधि)।

2017 का अधिनियम संख्यांक 9

**हिमाचल प्रदेश चिकित्सीय सेवा-व्यक्ति तथा चिकित्सीय सेवा-संस्था (हिंसा और सम्पत्ति के नुकसान का निवारण) संशोधन अधिनियम, 2017**

(राज्यपाल महोदय द्वारा तारीख 1 जून, 2017 को यथाअनुमोदित)

हिमाचल प्रदेश चिकित्सीय सेवा-व्यक्ति तथा चिकित्सीय सेवा-संस्था (हिंसा और सम्पत्ति के नुकसान का निवारण) अधिनियम, 2009 (2010 का अधिनियम संख्यांक 5) का संशोधन करने के लिए **अधिनियम** ।

भारत गणराज्य के अड़सठवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. **संक्षिप्त नाम.**—इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश चिकित्सीय सेवा—व्यक्ति तथा चिकित्सीय सेवा—संस्था (हिंसा और सम्पत्ति के नुकसान का निवारण) संशोधन अधिनियम, 2017 है।

2. **धारा 3 का संशोधन.**—हिमाचल प्रदेश चिकित्सीय सेवा—व्यक्ति तथा चिकित्सीय सेवा—संस्था (हिंसा और सम्पत्ति के नुकसान का निवारण) अधिनियम, 2009 (जिसे इसमें इसके पश्चात् “मूल अधिनियम” कहा गया है) की धारा 3 की उपधारा (1) में, “एक वर्ष” शब्दों के स्थान पर “तीन वर्ष” शब्द रखे जाएंगे।

3. **धारा 4 का प्रतिस्थापन.**—मूल अधिनियम की धारा 4 के स्थान पर निम्नलिखित धारा रखी जाएगी, अर्थात् :—

“4. अपराध का संज्ञान.—(1) इस धारा के अधीन किया गया अपराध संज्ञेय और अजमानतीय होगा।

(2) कोई भी न्यायालय इस अधिनियम के अधीन दण्डनीय किसी अपराध का संज्ञान राज्य सरकार द्वारा इस निमित्त अधिसूचना द्वारा प्राधिकृत किसी अधिकारी द्वारा लिखित में की गई शिकायत के सिवाय न करेगा।”।

#### AUTHORITATIVE ENGLISH TEXT

Act No. 9 of 2017

### THE HIMACHAL PRADESH MEDICARE SERVICE PERSONS AND MEDICARE SERVICE INSTITUTIONS (PREVENTION OF VIOLENCE AND DAMAGE TO PROPERTY) AMENDMENT ACT, 2017

(As Assented to by the Governor on 1<sup>ST</sup> JUNE, 2017)

AN

ACT

*to amend the Himachal Pradesh Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2009 (Act No. 5 of 2010).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-eighth Year of the Republic of India as follows :—

1. **Short title.**—This Act may be called the Himachal Pradesh Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Amendment Act, 2017.

2. **Amendment of section 3.**—In section 3 of the Himachal Pradesh Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2009 (hereinafter referred to as the “principal Act”), in sub-section (1), for the words “one year”, the words “three years” shall be substituted.

**3. Substitution of section 4.**—For section 4 of the principal Act, the following section shall be substituted, namely :—

“4. Cognizance of offence.— (1) Any offence committed under this Act shall be cognizable and non-bailable.

(2) No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the officer authorized by the Government, by notification, in this behalf.”.

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),  
District Shimla (H. P.)**

Shri Inder Kumar Gahlot s/o Lt. Shri Ramesh Chand Gahlot, r/o Gahlot Niwas, Lower Totu, Tehsil & District Shimla, Himachal Pradesh.

*Versus*

General Public

. . Respondent.

Whereas Shri Inder Kumar Gahlot s/o Lt. Shri Ramesh Chand Gahlot, r/o Gahlot Niwas, Lower Totu, Tehsil & District Shimla, Himachal Pradesh has filed an application along with affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the date of birth of her daughter/son named—Ms. Ishita Kumari & Mr. Abhishek Gahlot d/s/o Shri Inder Kumar Gahlot s/o Lt. Shri Ramesh Chand Gahlot, r/o Gahlot Niwas, Lower Totu, Tehsil & District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Municipal Corporation, Shimla.

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Ms. Ishita Kumari Gahlot	Daughter	27-05-1994
2.	Mr. Abhishek Gahlot	Son	14-06-1997

Hence, this proclamation is issued to the general public if they have any objection/claim regarding enter the name & date of birth of above named in the record of Municipal Corporation, Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 26-05-2017 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,  
Sub-Divisional Magistrate,  
Shimla (R), District Shimla.

**The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban),  
District Shimla, Himachal Pradesh**

Smt. Sushma w/o Shri Balbir Singh, r/o Village Sarwain, P.O. Fagu, Tehsil Theog, District Shimla, H.P. . . Applicant.

*Versus*

General Public

.. Respondent.

*Application under section 13(3) of Birth and Death Registration Act, 1969.*

Whereas Smt. Sushma w/o Shri Balbir Singh, r/o Village Sarwain, P.O. Fagu, Tehsil Theog, District Shimla, H.P. has preferred an application to the undersigned for registration the date of birth of her son namely Sujal (DOB 22-7-2005) in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having and objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 1-7-2017 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 1<sup>st</sup> day of June, 2017.

Seal.

HEMIS NEGI,  
Sub-Divisional Magistrate,  
Shimla (Urban).

**नाम परिवर्तन**

मैं, विनोद कुमार पुत्र स्व० श्री तुलसी राम, गांव व डाकखाना मनहुता, तहसील भटियात, जिला चम्बा, का निवासी हूँ। पंचायत रिकार्ड और अन्य दस्तावेजों में मेरा नाम विनोद कुमार गलत दर्ज है। जबकि मेरे बच्चों के स्कूल रिकार्ड में विनोद शर्मा दर्ज है जो सही और दुरुस्त है। मुझे विनोद शर्मा के नाम से जाना जाए।

**विनोद शर्मा**  
पुत्र स्व० श्री तुलसी राम,  
गांव व डाकखाना मनहुता, तहसील भटियात,  
जिला चम्बा, हि० प्र०।